

(25,411)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 581.

ZOILO IBANEZ DE ALDECOA Y PALET AND JOAQUIN
IBANEZ DE ALDECOA Y PALET, APPELLANTS,

vs.

THE HONGKONG AND SHANGHAI BANKING CORPORA-
TION ET AL.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

No. 6086.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET and ZOILO IBAÑEZ DE
ALDECOA Y PALET, Plaintiffs,
against

"ALDECOA Y COMPAÑIA EN LIQUIDACION," ISABEL PALET GABARRO
Viuda de Aldecoa, and "The Hongkong and Shanghai Banking
Corporation," Defendants.

Complaint.

Now come the plaintiffs and state:

I.

(a) That they are born in the Philippine Islands, residing at the City of Manila, Joaquin Ibañez de Aldecoa being 23 years of age, and Zoilo Ibañez de Aldecoa 22 years of age, the latter making his appearance with the assistance of his guardian ad litem Don Vicente Miranda y Dyce who has been appointed ad hoc by the Court of First Instance of Manila.

2 (b) The defendant, "Aldecoa y Compañia en Liquidacion" is a general mercantile partnership (sociedad mercantil regular colectiva), domiciled in Manila, and Registered in the Mercantile Registry of this City, being at present in its period of liquidation on account of the expiration of its term of duration, Mr. William Urquhart being the liquidator of the same, having acted and continuing to act as such from the month of January, 1907.

(c) The defendant Isabel Palet Gabarro, is the widow of Don Zoilo Ibañez de Aldecoa, merchant, domiciled in Manila, and residing at present in Madrid, Kingdom of Spain, being the owner of real property situate in the Philippine Islands, and one of the partners, in fact, the main and most important partner, of the firm "Aldecoa y Compañia en liquidation."

(d) The defendant The Hongkong and Shanghai Banking Corporation, is a banking corporation duly established and organized, which has been, and continues to be engaged in business in the Philippine Islands, being registered as such Corporation in the corresponding Registry, with its place of business open at Plaza de Cervantes, District of Binondo of this City.

II.

On February 23, 1906, both plaintiffs and defendants herein executed—581

3 executed a public instrument before the Notary Public of Manila, Don Jose Maria Rosado, by which, plaintiffs executed a mortgage on certain real property of their own, situate in the City of Manila, to secure the payment of a considerable sum of money, amounting to four hundred seventy-five thousand (P475,000) pesos, which the firm "Aldecoa y Compania" owed The Hongkong and Shanghai Banking Corporation, the terms of said contract being those contained in said instrument, a copy of which is attached to this complaint, marked "Exhibit A," and the contents thereof made an essential part hereof, as if the same had been inserted in full and verbatim herein.

III.

Plaintiffs allege that at the time they signed the above mentioned instrument and executed the mortgage security on the real property of their own described therein, they were minors, and had no guardian of their property duly appointed in accordance with the laws in force in the Philippine Islands, and in fact they concurred and entervened in the execution of said contract and instrument without the assistance of any guardian and without any legal consent or authorization duly given in accordance with the laws of the Philippine Islands.

IV.

4 Plaintiffs also allege: that the said contract was made, agreed to and entered into, by and between the two mercantile entities "Aldecoa y Compania" and "The Hongkong and Shanghai Banking Corporation," for the reason that on said date, February 23, 1906, "The Hongkong and Shanghai Banking Corporation" having demanded from "Aldecoa y Compania" payment of the sum of P475,000, which was at that time due and payable to said Banking corporation, said "Aldecoa y Compania" could not at that date comply with that demand, and then, in order to avoid being sued and executed, agreed to enter into said compromise with the Bank, which compromise was and is for the sole and exclusive interest, benefit, and profit of the two contracting entities, and for the capitalist partners of "Aldecoa y Compania," and especially for Doña Isabel Palet Gabarro, one of the capitalist partners, the main and most important one of all, as hereinbefore said, of that partnership, without these plaintiffs deriving then or now any profit or benefit whatever from said contract, but on the contrary the same causing considerable prejudice to their private interests.

V.

Plaintiffs became parties to that contract giving mortgage security on their property described in said instrument "Exhibit A," attached hereto, for the reason that the other persons who concurred with these plaintiffs in the execution of said document, made the following statements and representations:

(a). —that the mother of plaintiffs, the defendant herein Doña Isabel Palet, ordered them to take part in and execute said contract, as they did:

(b). —that the sole aim sought by said contract was to save the good reputation in the market of the name of the late Don Zoilo Ibañez de Aldecoa, father of these plaintiffs;

(c). —that by said contract it was sought to guarantee a debt contracted by the father of plaintiffs;

(d). —that that contract, as regards these plaintiffs, was merely a nominal guarantee without any force whatever, because "Aldecoa y Compañía" was the only debtor.

Plaintiffs, at a later and recent date, have had knowledge, and so they aver and believe, that said statements and representations were and are false and erroneous, were uttered only to obtain the concurrence of these plaintiffs in the said contract of February 23, 1906, by which contract, the then manager of "Aldecoa y Compañía," Don Alejandro S. Macleod, sought to conceal from the members of "Aldecoa y Compañía," and most especially from Doña Isabel Palet y Gabarro, frauds committed by him and his co-managers in the administration of "Aldecoa Compañía," and in the private property of Doña Isabel Palet, all of which said frauds might have been discovered if the Hongkong and Shanghai Banking Corporation had forced payment of its credit.

Wherefore, plaintiffs ask that judgment be rendered in their favor and against defendants:

1st. Finding and adjudging that the appearance and execution by these plaintiffs of the contract of February 23, 1906, which is attached hereto, marked "Exhibit A," and made part hereof, is null and void.

2nd. Finding and adjudging that the obligations contracted and the mortgage executed by said contract on the real property belonging to these plaintiffs, and described in said "Exhibit A," which is made part hereof, are both to wit: said obligations and said mortgage, null and void.

3rd. Finding and adjudging that these plaintiffs are exempt from any obligation or liability, and their property released from the mortgage executed thereon by virtue of said contract.

4th. Granting these plaintiffs any other remedy which the Court may deem just and equitable, and for the costs of this action.

Manila, January 24, 1908.

(Signed)

ALFREDO CHICOTE,
For Chicote and Miranda.

Stamped: United States of America, Manila, P. I. Part II. No. 6086. The above complaint has been filed this 25th of January, 1908.

(Signed)

J. Mc. MICKING,
Clerk, Court of the First Instance of Manila, P. I.

EXHIBIT "A."

Deed of Credit.

Know all by these presents, that we, Don Joaquin Ibañez de Aldecos y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31st, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to: Don Zoiilo Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, through an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes on July 31st, 1904, assisted by and with the consent of my said mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow of Señor Don Zoiilo Ibañez de Aldecos, by virtue of

- an instrument ratified and executed before the Notary Public of the Villa y Corte of Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on December 31st, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to legally execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, all of them, parties of the first part; and Mr. Harris Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the "Hongkong & Shanghai Banking Corporation" by virtue of the representation and powers conferred to me by the letter of attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco Asis Caballero y Mediano, Vice-Consul of Spain for the British Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul for the same Colony, and registered on February 26, 1898, at Sheet No. 10, bis, inscription No. 1, Volume 2 of the Book of Part-

nerships of the Mercantile Registry of this City, the party of the second part, hereby make it known:

I.—That Don Joaquin, Don Zoilo, and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in undivided equal shares at the rate of one third each of the following property, to wit:

A. Urban property. A lot with the camarine of strong materials with roof of galvanized iron built within its area, situated in Calle Jolo of the District and Judicial

Section of Binondo and North Fol. 188 vto. Vol. 13, Binondo demarcation of the Registry of Section and 48 of the Archive, the Property of this Capital and property No. 111 duplicate, Indesignated at present by the description 8th. Government police No. 6. It is

bounded on the right of its entrance by house and lot No. 4 belonging to the heirs of Don Jose Maria Fabie; on the left by house and lot No. 8 of Don Jose Varela y Miciano, and on the back by Binondo River. The whole of the lot occupies a superficial area of 1308 square meters and 23 decimeters, of which 393 square meters and 58 decimeters are covered by the building. This property is registered at folios 181, 186, and 187, Volumes 6 and 48 of the Registry of property of this Capital; books 3 and 13 of the Section of Binondo, property No. 111, inscriptions Nos. 5, 6 and 7.

II. That the Excelentisima Señora Doña Isabel Palet y Gabarro, and her children Don Joaquin, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in equal undivided shares, at the rate of one fourth each of the following property, to wit:

Three buildings joined under the name of "Camarines de la Barraca" the reason for joining them being the fact that they are used as warehouses, the description of which being as follows:

B. First. Urban property, consisting of a masonry camarine with iron roof, called "La Prensa" because it contains a hemp press, with the lots on which it is built, said property being situated in Calle Barraca of the district of Binondo, designated by police No. 5 and bounded on the right of its entrance by one of the three

Fol. 191 vto. Vol. 13, Section of Binondo and 48 Archive, property No. 92 duplicate, Inscription 7.

properties to wit: that designated with No. 7 of the same street, on the left by a lot without number which is the third of the three properties in question, and on the back by the lot without number of Calle Carenero belonging to the Hacienda; its superficial area measures 1875 square meters with 84 square decimeters, of which the building occupies an area of 1553 square meters and 74 square centimeters. This property is registered at folios 70, 72, 73 and 190, Volumes 6 and 48, Book 3 of Section of Binondo, property No. 91, annotations letters C, Ch and E.

C. Second. Urban property, consisting of a house and a camarine or bodega which is an accessory thereof, of strong materials with the lot on which they are built,

situated in Calle Barraca of the district of Binondo and designated at present with No. 7. It is bounded on the right of its entrance by house and lot No. 9

Fol. 200, Volume 13 Section Binondo and 48 Archive, property No. 91 duplicate, Inscription 7th.

belonging to Doña Maria C. Vales y San Juan, formerly of the late Don Vicente Vales, on the left by camarine and lot. No. 5 hereinbefore described and on the back by lot without number of Calle Carenero of the Hacienda, its superficial area being 564 square meters and 94 square centimeters, of which the building occupies 499 meters and 69 centimeters. This property is registered at folios 76, 78, 79 and 189, Volumes 6 and 48 Book 3 of Binondo Section, property No. 92, annotations letters C, Ch, and E.

12 D. Third. Urban property, consisting of a strong material camarine built on its own lot, situated in Calle Barraca of the district of Binondo, without police number as yet. It is bounded on the right of its entrance by house No. 5 first described under letter B, on the left also by house No. 5 of the Presses and on the back by lot without number of Calle Carenero belonging to the Hacienda. It has a superficial area of 1153 square meters and 26 square centimeters, of which the building occupies 606 square meters and 16 square centimeters. This property is registered at folios 82, 84, 85 and 202, Volumes 6 and 48, Book 3 of Binondo Section, property No. 93, annotations letters C, Ch, and E.

Fol. 293 vto. Volume 13, Section Binondo and 48 Archive, property No. 93 duplicate, Inscription 7th.

E. Urban property, consisting of nine houses and their outbuildings of strong materials with the large lot on which they are built situated and fronting, for the effects of this description, on Calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Tuñon and of Don Segando Javier; on the left by calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8,070 square meters 76 centimeters also square.

Fol. 210, Volume 3, Book 8, Malate Section, property No. 384, annotation letter B.

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III. That the Hongkong & Shanghai Banking Corporation had granted to the firm of Aldecoa and Company a certain credit in current account to attend to its mercantile operations, of which use had been made up to this date, and in order that it may appear in due form, as well as to make clear the conditions stipulated to that effect, we execute the present instrument by virtue of which we solemnly state:

IV. That the Hongkong & Shanghai Banking Corporation shall keep open in favor of the general mercantile partnership Aldecoa and Company a credit in current account up to the sum of Four Hundred and Seventy-Five Thousand Pessos (P475,000) Philippine Currency part of which have already been used.

V. That the debtor firm of Aldecoa and Company secures the payment of its credit in favor of the Hongkong & Shanghai Banking Corporation during the whole period of existence of this agreement, with all the hemp bought by the firm or sent to the same for sale by its debtors or other persons who may be in similar case, and therefore, the general mercantile partnership of Aldecoa and Company binds itself to deposit with the Hongkong & Shanghai Banking Corporation all the amounts derived from the sales of said product in Manila, said firm Aldecoa and Company being, however, authorized to withdraw these deposits by issuing checks against its current account in order to attend, with the amounts so drawn, to the development of its business in accordance with the continuation of its credit opened and acknowledged in the present agreement and without prejudice to the reduction of said credit in the form hereinafter stipulated.

VI. That the debtor Aldecoa and Company binds itself to send to the Hongkong & Shanghai Banking Corporation in Manila, at the end of each month a written notice giving a detailed and complete statement of the quantity of hemp which said company has on hand in Manila and in the provinces.

VII. The credit in current account which the Hongkong & Shanghai Banking Corporation has opened in favor of the general mercantile partnership Aldecoa and Company shall continue in force during the term of this agreement, provided, that said debtor company shall continue to make use of said credit through checks issued against the said Bank, with the sole object of applying those funds to the purchase of hemp, rice, and other products related with the object of said partnership, and subject to the obligation on the part of the debtor Aldecoa and Company to reduce its debit balance down to the sum of Four Hundred and Twenty-five Thousand Pesos (P425,000) on or before December 31, 1906, and to continue reducing said debit balance at the rate of at least Fifty Thousand Pesos (P50,000) per year until said debit balance be reduced to the sum of Two Hundred and Twenty-five Thousand Pesos (P225,000) Philippine Currency, on January 1, 1911, on which event, the creditor Bank reserves to itself the right to enter into new stipulations with the debtor company for the total payment of its debt; provided, that the yearly instalments for the reduction of the capital shall begin to run from the 1st day of January 1906, so that the first Fifty Thousand Pesos (P50,000) Philippine Currency shall be paid on December 31, 1906, and so on, until this stipulation is complied with, that is to say for the sake of clearness:

(a) Up to and until December 31, 1906 the credit shall be for four hundred and seventy-five thousand pesos (P475,000) Philippine Currency.

(b) Up to and until December 31, 1907, the credit shall be for four hundred and twenty-five thousand pesos (P425,000) Philippine Currency.

(c) Up to and until December 31, 1908, the credit shall be of three hundred and seventy-five thousand pesos (P375,000) Philippine Currency.

(d) Up to and until December 31, 1909, the credit shall be of three hundred and twenty-five thousand pesos (P325,000) Philippine Currency.

(e) Up to and until December 31, 1910, the credit shall be of two hundred and seventy-five thousand pesos (P275,000) Philippine Currency.

So that on January 1, 1911, the credit shall not be for a greater sum than two hundred and twenty-five thousand pesos (P225,000) Philippine Currency.

VIII. In the event the debtor company should succeed in reducing the credit existing in its favor in the provinces by full or partial payment to said debtor company by its debtors, the amount which this company might receive for this reason, shall be paid into the Hongkong & Shanghai Banking Corporation on account of its debt, as additional payments to those agreed upon, in the foregoing clauses.

IX. The said credit in current account shall earn in favor of the creditor Bank a reciprocal interest of seven per cent (7%) to be liquidated and payable at the end of every six months.

17 X. The firm of Aldecoa and Company guarantees the faithful and exact compliance on its part with all the obligations entered into by virtue of this document with the pledge of sixteen (16) shares of the capital stock of the Banco Español Filipino of this City which it owns, numbered from 2,356 to 2,371 inclusive and 450 shares which it also owns of the capital stock of the Sociedad Anónima "Compañía Marítima" marked with Nos. 51 to 100 inclusive and 301 to 700 also inclusive, said shares being delivered to the Hongkong & Shanghai Banking Corporation for said Bank to keep the same in its possession as a deposit and with the diligence of an honest and reasonable man.

XI. We, Don Fernando Zobel y de Ayala in the name and on behalf of Doña Isabel Palet y Gabarro, Don Joaquin Ibañez de Aldecoa and Don Zolio Ibañez de Aldecoa, guarantee, furthermore, the exact and faithful compliance with all the obligations contracted by the firm of Aldecoa and Company, with the voluntary special mortgage which we now constitute on the shares or interest which we respectively have in the property above described; the interest which we have on the property described with letter "A" being security for the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five centavos (P13,847.75) Philippine Currency of the principal with the interest thereof; that which is described

18 with the letter "B" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and interest thereof; that described under letter "C" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and the interest thereof; that described under letter "D" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and interest thereof; and that described under letter "E" for the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98) Philippine Currency of the principal and the

interest thereof; each one of said pieces of property being also responsible in the sum of five hundred pesos (P500) for costs and judicial expenses, the balance of seventy-three thousand five hundred and ninety-eight pesos and eighteen centavos (P73,598.18) Philippine Currency being secured by the shares of stock referred to in the preceding paragraph and which are given in pledge.

XII. That by common agreement all the contracting parties fix the value of the interest in the mortgaged property as follows, to wit:

19 that in the property described under letter "A" in the sum of thirteen thousand eight hundred and forty seven pesos and seventy-five centavos (P13,847.75); that in the property described under letter "B" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that in the property described under letter "C" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that in the property described under letter "D" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); and that in the property described under letter "E" in the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98); which respective values shall be the upset price for the first auction which in case of breach of the present obligation must take place in accordance with the existing laws and those which in the future might be promulgated on the premises, waiving, therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

XIII. It is a stipulated condition that the creditor Bank shall not have the right to ask for the sale of the property above described to reimburse itself with the proceeds thereof of the total amount of the debt of the firm of Aldecoa & Co., until after the term of five (5) years fixed for the complete payment of the same shall have expired;

20 being restricted in the meantime to receive from the debtor company the yearly sum of fifty thousand pesos (P50,000) which has been fixed for the partial yearly payment, and which is secured by the shares of stock above enumerated, even if the firm of Aldecoa and Company should enter in its period of liquidation before the expiration of the said five years (5), since to this effect it is stipulated and agreed that the said term of five (5) years shall not be reduced to a lesser period of time for the mere fact that the firm of Aldecoa and Company goes into or places itself in liquidation either by reason of the expiration of the term of partnership or by reason of being convenient to its interests and also whether said liquidation shall be carried privately or in an official or public manner, for all of which the debtor Company is from now empowered, without the term fixed in this document for the payment of its debt, being thereby diminished.

XIV. Mr. Harris Davies Campbell Jones in the name and on behalf of the Hongkong & Shanghai Banking Corporation does accept this document as to each and every part thereof, declaring to have received the sixteen (16) shares of stock of the Banco Español Filipino and the four hundred and fifty (450) shares of stock of the

Sociedad Anonima "Compañia Maritima" to which reference is made in paragraph X of this document, for said Bank which I represent, to preserve and keep the same as a deposit while the present obligation is in force.

XV. Both contracting parties submit themselves to the jurisdiction of the Judges and Courts of this Capital for the settlement of all judicial questions which might be raised by reason of the non-compliance of this contract, expressly waiving therefor the jurisdiction of the forum of their respective domiciles.

XVI. That both contracting parties bind themselves to execute at any time whatever documents may be necessary to make effective or to perfect the corresponding rights and obligations which by this document it is intended to acknowledge and establish and which may be necessary for the registration of the mortgages or other obligations herein granted.

In witness whereof, we sign these presents in triplicate in Manila, this 23rd day of February, 1906.

For the HONGKONG & SHANGHAI BANK-
ING CORPORATION,

(Sgd.)

H. D. C. JONES, *Manager*.

(Sgd.)

ZOILO I. DE ALDECOA.

(Sgd.)

JOAQUIN I. DE ALDECOA.

(Sgd.)

ALDECOA & CO.

(Sgd.)

FERNANDO ZOBEL.

Signed in the presence of:

(Sgd.)

ANTONIO HIDALGO.

(Sgd.)

JOSE MA. ROSADO.

22 UNITED STATES OF AMERICA,

City of Manila, Island of Luzon,

Philippine Islands, ss:

In the City of Manila this 23rd day of February, 1906, before me personally appeared Don Joaquin Ibañez de Aldecoa y Palet; Don Zoilo Ibañez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, Don Alejandro Macleod and Mr. Harris Davies Campbell Jones, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Messrs. Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, Fernando Zobel y de Ayala and Harris Davies Campbell Jones, exhibited to me their respective certificates of Cedula Nos. A-1330177, A-1330173, A-1330174, and A-1325201, issued by the Collector of Internal Revenue in this City the 25th of January, 25th of January, 25th of January and 10th of January, 1906; Mr. Alejandro Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.) JOSE M. A. ROSADO,

Notary Public.

My commission expires on December 31, 1906.

23 Filed at 11:35 a. m. on this date according to entry No.
230, page 98, Volume 11 of the Diary. Manila, February
28, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P0.75—No. 1 Ar.

Filed again together with other documents at 9:25 a. m. on this
date, according to entry No. 339, page 144 of Volume 11th of the
Diary. Manila, March 31st, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P1.00—No. 2 Sch.

The above document has been registered as to the pieces of prop-
erty designated under letters B, C, and A, at folios, Volume, Section
and File, specified at the margin of the inscription of each piece of
property, and registration has been suspended in regard to property
designated under letter E by reason of the fact that some of the par-
cels of land which form part of the same do not appear registered in
the name of the mortgagors, and instead thereof, and at the instance
of the person presenting the document, preventive notation has been
made of said suspension, which shall produce the effects provided for

24 by law, at folio 210 of Volume 3rd, Book 8th of Malate Sec-
tion, property Number 384, notation letter D. Manila, April
26, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P111.85—No. 7 Sch.

The term of duration of the effects of the preventive notation
letter B, referred to in the preceding note is extended to one hundred
and eighty days, by virtue of the decree issued on the 11th inst. by
Hon. S. del Rosario, Judge of the Court of Land Registration of this
City. Manila, August 14, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P0.50,—No. 8 Sch.

25 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

Civil. No. 6086.

DON ZOILO IBAÑEZ DE ALDECOA Y PALET, Assisted by His Guardian Ad Litem, Don Vicente Miranda and Don Jose Ibanez de Aldecoa y Palet, Plaintiffs.

against

"ALDECOA Y COMPAÑIA EN LIQUIDACION" Represented by Its Liquidator, Mr. William Urquhart, Doña Isabel Palet y Gabarro, Widow of Ibañez de Aldecoa and the Hongkong and Shanghai Banking Corporation, Defendants; Zoilo Ibañez de Aldecoa y Palet and With Him, His Attorneys, Chicote y Miranda, Petitioners.

Now come the petitioners and state:

1st. That petitioner Don Zoilo Ibañez de Aldecoa y Palet, is a minor, native of the Philippine Islands, where he owns a large amount of real and personal property.

26 2nd. That said Don Zoilo Ibañez de Aldecoa y Palet has no guardian or any other person duly appointed and qualified to represent and assist him in the defense of his property in the Philippine Islands.

3rd. That said minor, although emancipated in accordance with the Civil Code, has no personality or legal capacity in the Philippine Islands to execute any civil acts and much less to dispose of his property, and to bring and prosecute any action in regard to the same.

4th. That said minor, in order to defend his property and interests in the Philippine Islands, desires and is about to file some complaints and prosecute some important actions, amongst which is the one whose title heads this petition, and to this end he needs and asks that he be provided with a guardian ad litem.

5th. That for such office Don Vicente Miranda is designated, he being a personal friend of the minor and deserving of his confidence.

The petitioners ask:

That the Court shall provide the minor Don Zoilo Ibañez de Aldecoa with a guardian ad-litem, and if so deemed convenient, to appoint as such attorney Don Vicente Miranda.

Manila, January 24, 1908.

27 (Signed)

ALFREDO CHICOTE,
For Chicote y Miranda.

(Heading and Title of the Case Omitted.)

Order.

In view of the foregoing petition filed by Don Zoilo Ibañez de Aldecoa and his Attorneys Chicote and Miranda and

Whereas: It appears from said petition that said Don Zoilo Ibañez de Aldecoa is a minor and real estate holder in the Philippine Islands and expects and seeks to be a party in some actions before the Courts of these Islands and is already a party in the above entitled case;

Whereas it is therein alleged that said minor has no guardian or other person in the Philippine Islands, duly appointed and qualified to represent and assist him in those actions in which he is and expects to be a party;

It Is, Therefore, Ordered and Decreed that Don Vicente Miranda, Attorney-at-law, be and is hereby appointed guardian ad-litem of said minor to represent and assist him in those cases and proceedings in which said minor is or may be a party in the Philippine Islands, and until further orders of this Court.

So ordered.

28 Manila, January 27, 1908.

(Signed)

A. S. GROSSFIELD, *Judge.*

(Title of the Case Omitted.)

Oath of Office.

I, Vicente Miranda y Dyce, having been appointed guardian of the person and property of Zoilo Ibañez de Aldecoa, do solemnly swear that I will faithfully fulfill the duties of my trust as such.

VICENTE MIRANDA.

Subscribed and sworn to before me on this 27th day of January, 1908, by Vicente Miranda, who exhibited cedula No. 156741 issued at Manila on the 8th day of January, 1907, by the Collector of Internal Revenue.

J. McMICKING,

Clerk of the Court.

UNITED STATES OF AMERICA,
Philippine Islands, Manila:

Court of First Instance.

No. 6086.

29 JOAQUIN IBAÑEZ DE ALDECOA Y PALET Y OTRO, Plaintiff,
 against
 ALDECOA Y COMPAÑIA EN LIQUIDACION Y OTROS, Defendants.

Summons.

"Aldecoa y Compañia en Liquidacion." Isabel Palet Gabarro Viuda de Aldecoa y The Hongkong & Shanghai Banking Corporation.

You are hereby required to enter your appearance in the Office of the Clerk of the Court of First Instance of the City of Manila within twenty (20) days after the service of this summons upon you exclusive of the day of such service if it is served on you in the city of Manila otherwise within forty (40) days, and to answer the complaint of said plaintiff which is hereto attached and herewith served upon you, within the time fixed by the rules of this Court. If you fail to appear within the time aforesaid the plaintiff will take judgment against you by default and demand from said Court the relief applied for in said complaint.

Witness the Honorable A. S. Crossfield, Judge of this Court of First Instance this 25th day of January 1908.

30

J. McMICKING,

Clerk of the Court of First Instance of the City of Manila.

Sheriff's Return.

UNITED STATES OF AMERICA,
Philippine Islands:

On this date I have served a copy of the within summons and of the complaint attached upon Aldecoa y Compañia en liquidacion, having left the papers in the hands of Mr. William Urquhart, managing liquidator of said company; to the Hongkong and Shanghai Banking Corporation having left the papers in the hands of Mr. Stephen, the manager of said Bank.

Done at Manila, P. I. this 27th day of January, 1908.

J. McMICKING,
Sheriff Ex-Officio of Manila.

(Signed)

JOSE SANCHEZ,
Deputy Sheriff.

Sheriff fees P—4.24; Paid by plaintiff.

(Title of the Case Omitted).

Now comes the Hongkong and Shanghai Banking Corporation,
the defendant in the above entitled case and files a demurrer
31 to the complaint in this case basing the same in the following
motive:

I.

That the complaint does not allege facts sufficient to constitute a
cause of action against this defendant.

Wherefore, said defendant asks that the complaint be dismissed,
with costs against plaintiffs.

HAUSSERMANN, COHN AND
WILLIAMS,
CHARLES C. COLM,
pp. (Signed) *Attorneys for the Defendant,*
Hongkong & Shanghai Banking Corporation.

Received copy this 12 day of February, 1908 for Rosado, Sanz
and Opiiso.

(Signed)

B. PABALAN.

This is to certify that on this date February 12, 1908, I have left
a copy of the foregoing at the office of Messrs. Chicote and Miranda.

(Signed)

ZOILO PEÑA.

(Title of the Case Omitted.)

The Clerk shall enter our appearance in the above entitled case, as
attorneys for the defendant Aldecoa y Compañia en liquidacion.

Manila, February 12, 1908.

32 (Signed) ROSADO, SANZ & OPISSO,
Attorneys-at-Law. 31 Plaza del Padre Moraga, Manila.

Stamped: Filed this 14 of February, 1908, at 3 p. m.

(Signed)

J. McMICKING, *Clerk.*

(Title of the Case Omitted.)

Now comes Aldecoa and Company in liquidation, a defendant in
the above entitled case and files a demurrer to the complaint therein,
based in the following motive:

That the complaint does not allege facts sufficient to constitute a
cause of action against this defendant.

* * * * *

Wherefore, said defendant prays that the complaint be dismissed
with costs against the plaintiffs.

Manila, February 12, 1908.

(Signed)

ROSADO, SANZ & OPISSO,
Attorneys for the Defendant Aldecoa & Company
in Liquidation.

- 33 Received copy this 14 day of February, 1908.
 HAUSSELMANN, COHN & WILLIAMS,
 pp. (Signed) CHARLES C. COLM,
Attorneys for the Defendant,
Hongkong & Shanghai Banking Corporation.
 (Signed) CHICOTE Y MIRANDA,
For Plaintiffs.

(Title of the Case Omitted.)

Stamped: Court of First Instance, Manila, P. I. Feb. 18, 1908.
 Clerk's Office.

Messrs. Rosado, Sanz & Opisso.

Messrs. Haussermann, Cohn & Williams.

Attorneys for the defendants, Aldecoa and Company in liquidation
 and the Hongkong & Shanghai Banking Corporation.

GENTLEMEN: By these presents, we notify you that on Friday
 the 21st instant at 8 a. m. we shall ask the Honorable Judge who
 presides part third to overrule the demurrer filed by you against the
 complaint of the plaintiffs in the above entitled case.

Manila, February 17, 1908.

(Signed) ALFREDO CHICOTE,
For Chicote and Miranda,
Attorneys for the Plaintiffs.

- 34 Received copy this 18th day of February, 1908.
 (Signed) HAUSSELMANN, COHN & WILLIAMS,
Attorneys for the Defendant,
The Hongkong & Shanghai Banking Corporation.
 (Signed) ROSADO, SANZ & OPISSO,
Attorneys for the Aldecoa & Company
in Liquidation.

(Title of the Case Omitted.)

Order.

This case is before the Court for hearing the demurrers presented
 in behalf of the defendant Hongkong & Shanghai Banking Corpora-
 tion, and in behalf of the defendant Aldecoa y Compañia, in liquida-
 tion.

Sr. Alfredo Chicote appeared for the plaintiffs; Mr. C. C. Cohn
 for the defendant Hongkong & Shanghai Banking Corporation; and
 Srs. Rosado, Sanz & Opisso for the defendant Aldecoa y Compañia,
 in liquidation.

The above described demurrers are based upon the ground that the
 complaint does not state facts sufficient to constitute a cause of action
 against the defendants.

- 35 After hearing all the parties, through their respective at-
 torneys, I find that the action is one brought by the plaintiffs,
 as minors, to set aside a document executed by them by which

they became sureties to the defendant Honghong & Shanghai Banking Corporation, the other defendants being parties to the same document as sureties, on the ground that they were minors at the time the document was executed and that they were not in any way judicially authorized so to do, having no guardian. The complaint is accompanied with a copy of the document which they had signed, from which it appears that the document executed was a notarial document, and that at the time of its execution the plaintiffs stated in the document that they had been emancipated by their mother by a public document made before a notary public on the 31st day of July, 1904, and that they were joined or assisted by their mother in executing the document of guaranty.

If the plaintiffs were emancipated in accordance with law at the time of executing the document they could have legally executed the document in question with the permission of their father, or in his absence the mother, and having neither with a guardian. In this case it appears from the document that they had the consent of the mother.

It is true that it does not appear that there was no father, but that the document was executed with the consent of the mother, but having power to execute the document, and having executed and delivered it, they would be estopped from denying it now unless the allegations contained in the document itself as to their emancipation and assistance of the mother are false.

As to the Honghong & Shanghai Banking Corporation there is no allegation in the complaint that any of the conditions of the contract, which are also a part of the complaint, are false.

From the allegations of the complaint, it appearing that the plaintiffs became sureties for the defendant Aldecoa y Compañia, they are not estopped as to them of setting up lack of consideration, and having the contract set aside as to Aldecoa y Compañia.

It is therefore ordered that the demurrer as to the defendant Hongkong & Shanghai Banking Corporation be sustained; and that the demurrer as to the defendant Aldecoa y Compañia, in liquidation, be overruled.

The plaintiffs may amend their complaint, if they so desire, within ten days.

Manila, P. I., March 4th, 1908.

A. S. CROSSFIELD, *Judge*.

This 5th day of March, 1908, notices of the above order were sent to the attorneys of the parties.

I certify,
(Signed)

JOSE CASIMIRO,
Deputy Sheriff.

(Title of the Case Omitted.)

It is hereby agreed by and between the undersigned attorneys that by reason of the demurrer filed by the Honghong & Shanghai Bank-

ing Corporation having been sustained and as a result thereof, plaintiff being obliged to amend their complaint, the defendant Aldecoa & Company shall have ten days to answer to the complaint from the date in which the amended complaint be filed. This agreement is made in order that the different defendants shall answer one single complaint in order to have a clearer understanding during the trial of the case, Manila, March 12, 1908.

(Signed) ALFREDO CHICOTE,
For Chicote & Miranda, Attorneys for Plaintiffs.
 (Signed) ROSADO, SANZ & OPISSO,
Attorneys for the Defendant, Aldecoa & Company

(Filed this 13th day of March, 1908 at 9:10 a. m. — — —,
 Clerk.)

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Amended Complaint.

(Title of the Case Omitted.)

Now come the plaintiffs and allege:

I.

(a). That they are born in the Philippine Islands, residing at the City of Manila, Joaquín Ibañez de Aldecoa being 23 years of age, and Zoilo Ibañez de Aldecoa 22 years of age, the latter making his appearance with the assistance of his guardian ad litem Don Vicente Miranda y Dyce who has been appointed ad hoc by the Court of First Instance of Manila.

(b). The defendant, "Aldecoa y Compañía en Liquidación" is a general mercantile partnership, sociedad mercantil regular colectiva), domiciled in Manila, and registered in the Mercantile Registry of this City, being at present in its period of liquidation on account of the expiration of its term of duration, Mr. William Urquhart being the liquidator of the same, having acted and continuing to act as such from the month of January, 1907.

(c). The defendant Isabel Palet Gabarro, is the widow of Don Zoilo Ibañez de Aldecoa, merchant, domiciled in Manila, and residing at present in Madrid, Kingdom of Spain, being the
 39 owner of real property situate in the Philippine Islands, and one of the partners, in fact, the main and most important partner, of the firm "Aldecoa y Compañía en liquidación."

(d). The defendant The Hongkong and Shanghai Banking Corporation, is a banking corporation duly established and organized, which has been, and continues to be engaged in business in the Philippine Islands, being registered as such Corporation in the corresponding Registry, with its place of business open at Plaze de Cervantes, District of Binondo of this City.

II.

On July 31, 1903, plaintiffs herein, Joaquin and Zolio Ibañez de Aldecoa, being minors and owners of a large amount of both real and personal property in the Philippine Islands, the defendant Doña Isabel Palet Gabarró mother of said plaintiffs, acting in violation of the laws in force in the Philippine Islands, without capacity, authority or permission therefor, by documents ratified on that date before the Notary Public, Don Enrique Barrera y Caldes, Manila, P. I. stated the following:

That acknowledging in her son (she referred to her sons, Don Joaquin Ibañez de Aldecoa y Palet and Don Zolio Ibañez de Aldecoa y Palet) the faculty to rule his person and to manage his property, renounces for herself the parental authority (Patria Potestad) which she heretofore had over his person and property, and by virtue thereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire, just as if he were of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents either public or private which may be necessary for the above named purposes.

Plaintiffs allege that, by virtue of recent information by them acquired, they know now, and so do they believe and allege, that at the time the document above referred to was made and ratified, Doña Isabel Palet Gabarro did not exercise her parental authority nor any other authority or legal representation over them.

III.

On February 23, 1906, plaintiffs and defendants signed a document ratified before the Notary Public of Manila, Don Jose Maria Rosado by which document the plaintiffs executed a mortgage on certain real property owned by them, situated in the city of Manila, to secure the payment of a considerable sum of money amounting to P475,000 which, it was said, the Hongkong & Shanghai Banking Corporation had credited to the current account of the firm of Aldecoa & Company. The terms of said document being such as appear in the said deed, copy of which is attached to this complaint, marked "Exhibit A," and the contents thereof made part hereof as if the same had been inserted in the body of this complaint, so that a better knowledge be had as to the obligation contracted by these plaintiffs.

IV.

Plaintiffs allege that at the time they signed the above mentioned document of February 23, 1906 and gave the mortgage security appearing therein on the real property belonging to them and described in such document, they were minors and were not emancipated nor could they be so legally and validly under the laws in

force in the Philippine Islands and they had no guardian of their person and property and in fact they concurred and intervened in the execution of said document of February 23, 1906 without the assistance of a guardian or any other valid and legal representation and without the consent or legal authority required by law even in case they had been emancipated minors.

V.

42 Plaintiffs allege furthermore that they were deceitfully induced by Mr. Alejandro S. Macleod, as manager of Aldecoa & Company, and by Mr. Harris Davies Campbell Jones, as manager of the Hongkong & Shanghai Banking Corporation, each by himself and each in collusion with the other against these plaintiffs in order that said plaintiffs should, as in fact they did, intervene, mortgaging their real property described in "Exhibit A," to the prejudice of these plaintiffs and to the benefit of the defendants and each one of them, who, as these plaintiffs are now informed, deceitfully knowingly and untruthfully, in order to induce these plaintiffs to sign that document abusing of their inexperience, made to these plaintiffs the following false, cunning and deceitful statements and representations:

(a). That these plaintiffs were legally and validly emancipated.

(b). That Doña Isabel Palet, mother of these plaintiffs ordered them to intervene and execute the said document jointly with her, who would do the same through her attorney Don Fernando Zobel.

(c). That the purpose of said document was directed only to save the name and commercial reputation of the father of these plaintiffs.

43 (d). That by said document it was sought to secure a debt contracted by the father of these plaintiffs and it was also in part directed to obtain money from the Hongkong & Shanghai Banking Corporation.

(e). That such document, as regards these plaintiffs and Doña Isabel Palet, was merely a nominal guarantee without any effect, for the reason of Aldecoa & Company was the only debtor, the same being quite solvent.

All of which statements and representations, according to a later and recent information acquired by these plaintiffs, who so believe and do allege, were and are false and deceitful, and directed only to induce these plaintiffs to error, making them consent and subscribe that document by which Mr. Alejandro S. Macleod as agent of Aldecoa & Company and Mr. Harris Davies Campbell Jones as director of the Hongkong & Shanghai Banking Corporation, both in collusion with each other and for their own interest did seek, by such document, to conceal from the partners of Aldecoa & Company, and more specially Doña Isabel Palet, frauds committed in the management of Aldecoa & Company and in the private property of Doña Isabel Palet and of these plaintiffs, which frauds were committed by Alejandro S. Macleod and his co-managers in the firm

44 of Aldecoa & Company, Mr. Harris Davies Campbell Jones, director of the Hongkong & Shanghai Banking Corporation, not being ignorant as to some of them, he being one of the parties to said document and a very intimate friend of Messrs. Miguel Osorio, J. Alvarez Perez and Alejandro S. Macleod, defrauding managers of Aldecoa & Company and of Doña Isabel Palet and of these plaintiffs and their minor sister Doña Cecilia Ibañez y Aldecoa.

VI.

Furthermore, plaintiffs allege: that the said document of February 23, 1903, contains as regards these plaintiffs and in general, a false consideration, inasmuch as it is not true, as in the above referred document is said, that the defendant, the Hongkong & Shanghai Banking Corporation had ceded or opened any credit in favor the defendant Aldecoa & Company; and these plaintiffs know now and so do they allege, that such document is only an acknowledgment made by Aldecoa & Company of its indebtedness to the Hongkong and Shanghai Banking Corporation for the sum of P475,000, as an amount liquidated and payable at that time, and by concealing this fact, they did thereby make these plaintiffs believe that the purpose of such document was to grant a new credit to Aldecoa & Company.

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VII.

These plaintiffs also allege that *that* there was no consideration whatever for them to execute the above said document; that at the time when they were deceitfully induced to execute the same, as above said, Aldecoa & Company was, as it is at the present time, insolvent, and the time for its dissolution being near at hand, its term of duration being about to expire, and it was in fact dissolved by operation of law on account of loss of its capital; and at such time, as it is already stated, these plaintiffs were minors and were not or could be legally and validly emancipated, nor legally or validly represented, and this fact was well known by the managers of Aldecoa & Company and by the manager of the Hongkong and Shanghai Banking Corporation; and likewise, the defendants herein, through their agents, well knew that the consent which these plaintiffs gave in the above said document was null and void and the authority and consent which in said document their mother Doña Isabel Palet is said to give them through her attorney in fact Don Fernando Zobel, was an unlawful act, in violation of the laws in force; and said defendants through their agents also well knew, but deceitfully concealed it from these plaintiffs, that the supposed emancipation of these plaintiffs therein alleged, and the alleged consent of their mother, were and are false, fraudulent and against the laws, and were made use of by the defendants deceitfully to derive for themselves the benefit of the security given by these plaintiffs and cause them damage by reason of the insolvency and dissolution of the firm of Aldecoa and Company, which

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insolvency and dissolution were known to the defendants and said defendants concealed these facts to plaintiffs so that the frauds committed against the partners of Aldecoa & Company and in the private property of Doña Isabel Palet and of these plaintiffs and their sister Doña Cecilia Ibañez de Aldecoa, should not be discovered, said frauds being committed by the managing partners of Aldecoa and Company and especially by Mr. Alejandro S. Macleod, all of them being great friends of Mr. Harris Davis Campbell Jones, Manager of the Hongkong and Shanghai Banking Corporation who was not ignorant of some of the frauds committed.

Wherefore, plaintiffs ask that judgment be rendered in their favor and against the defendants:

(a). Finding and decreeing that the appearance and execution by these plaintiffs of the contract of February 23, 1906, which is attached hereto, marked "Exhibit A," and made part hereof in whatever pertains hereto, is null and void, unlawful and in violation of the law.

47 (b). Finding and decreeing that the obligation contracted and the mortgage executed by virtue of said document on the real property belonging to these plaintiffs and described in said "Exhibit A," which is made part hereof in whatever it may pertain hereto, are both to wit: said obligations and said mortgage, null and void and of no effect in regard to these plaintiffs.

(c). Finding and decreeing, by virtue thereof, that these plaintiffs be declared exempt from any obligation and liability, and their property above referred to release from the mortgage executed thereon by virtue of said document dated February 23, 1906.

(d). Granting these plaintiffs whatever other remedy which this Court may deem just and equitable, and the costs of this suit.

Manila, March 14, 1908.

(Signed.)

CHICOTE AND MIRANDA,
By ALFREDO CHICOTE,
Attorneys for the Plaintiffs.

Received copy this 14th day of March, 1908.

(Signed.) ROSADO, SANZ & OPISSO,
HAUSSERMANN, COHN & WILLIAMS,
p.p. (Signed.) CHARLES C. COHN.

Stamped: Filed on the 14 of March, 1908 at 10:35 a. m.

(Signed)

J. McMICKING, *Clerk.*

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(Title of the case omitted.)

To plaintiffs and to Messrs. Chicote and Miranda, Attorneys for Plaintiffs.

Please take notice that on March 28, 1908, at 8 a. m., defendant the Hongkong and Shanghai Banking Corporation shall ask this Honorable Court to strike out from the amended complaint filed in this case the following parts, to wit:

1. At page 2, lines 12-13, the words:

"and owners of a large amount of real and personal property in the Philippine Islands."

for the reason that the same are inapplicable, irrelevant and redundant.

2. At page 2, lines 15-16-17, the words:

"acting in violation of the laws in force in the Philippine Islands, without capacity, permission or authority therefor."

for the reason that they are conclusions of law and not of fact.

3. At page 2, lines 31-32-33-34-35, the words:

"Plaintiffs allege" etc. up to and including the words "or legal representation over them."

for the reason that they are conclusions of law and not of fact.

4. At page 3, lines 22-23, the words:

"and were emancipated nor could they be so legally and validly under the laws in force in the Philippine Islands."

for the reason that they are conclusions of law and not of fact.

49 5. At page 3, lines 26-27-28-29, the words:

"or of any other valid and legal representation" etc. including the words "had been emancipated minors."

for the reason that they are conclusions of law and not of fact.

6. At pages 3, 4 and 5, all of paragraph V., for the reason that the statements contained therein are sham, inapplicable, irrelevant, redundant and undignified.

7. At page 5, all of paragraph VI, for the reason that the statements therein contained are sham, irrelevant and redundant.

8. At page 6, all of paragraph VII, the statements therein contained being sham, inapplicable, irrelevant, redundant and undignified, and for the reason that they are conclusions of law and not of fact.

This motion shall be argued on the face of all the *the* pleadings filed in this action and is based on the reasons above given,

Manila, P. I., March 23, 1908.

HAUSSERMANN, AND COHN,
p.p. (Signed.) CHARLES C. COHN,
*Attorneys for the Defendant The Hongkong
and Shanghai Banking Corporation—
Rosario, 86, Binondo, Manila, P. I.*

Received copy of this motion this 23rd of March, 1908.

(Signed.) CHICOTE AND MIRANDA,
Attorneys for Plaintiffs.

50

(Title of the Case Omitted.)

Now comes the defendant The Hongkong and Shanghai Banking Corporation, and files a demurrer to the amended complaint based in the following motives, to wit:

I. That said amended complaint does not allege facts sufficient to constitute a cause of action against this defendant.

Therefore, said defendant asks that the complaint be dismissed with costs.

Manila, P. I., March 23, 1908.

p.p. (Signed.)

HAUSSERMANN AND COHN,
CHARLES C. COHN.

Received copy.

(Signed.)

CHICOTE AND MIRANDA,
Attorneys for Plaintiffs.

(Title of the Case Omitted.)

Order.

This case is now before the Court for hearing the demurrer of the defendant Hongkong and Shanghai Banking Corporation to the amended complaint of the plaintiffs, in connection with the motion of the defendants to strike out certain words contained in the complaint.

Mr. Charles C. Cohn appeared in behalf of the defendant
51 Hongkong & Shanghai Banking Corporation; Sr. Alfredo Chicote in behalf of the plaintiffs.

The motion is to strike out a portion of the complaint which alleges that the plaintiffs are the owners of certain merchandise, and further to strike out the allegation that it was done in violation of existing law in the Philippine Islands, and the allegation that certain things were done without legal representation, and various other parts of the complaint.

From an examination of these parts of the complaint which the motion is made to strike out, I find that while some of them may not be absolutely necessary to the complaint they are without particular objection, and some of them are necessary allegations.

The motion to strike out is therefore denied.

The complaint alleges on the part of the plaintiffs that the mortgage, which it is sought to set aside, was executed by them upon fraudulent representation; that while it appears that they were assisted by their mother in making the mortgage, and that they had been emancipated at the time of executing it, it is alleged that in reality they were not emancipated and their mother did not have the power to represent them in any way, and that they had no other person to appear for them.

I am of the opinion that the complaint states a cause of action, and sufficient facts, which if true, entitle the plaintiffs to the relief prayed for.

52 It is therefore ordered that the motion to strike out be denied, and that the demurrer be overruled.

Manila, P. I., March 31st, 1908.

(Signed.)

A. S. CROSSFIELD, *Judge.*

This 6th of April, 1908, the parties were notified of the above decision.

(Signed.)

JOSE CASIMIRO,
Deputy Clerk.

On April 9th, 1908, the defendant, The Hongkong and Shanghai Banking Corporation filed its exception against the order denying the motion to strike out and overruling the demurrer.

(Title of the Case Omitted.)

Now comes the defendant, The Hongkong and Shanghai Banking Corporation in the above entitled case, and answering to the amended complaint filed therein, states:

That the defendant denies each and every one of the allegations contained in the said amended complaint, and the whole of the same.

Wherefore, said defendant asks that judgment be rendered in its favor and against plaintiffs for the costs of this action.

53

(Signed) HAUSSERMAN AND COHN,
pp. CHARLES C. COHN,
*Attorneys for the Defendant The Hongkong &
Shanghai Banking Corporation.*

Received copy this 18th of April, 1908.

(Signed)

ROSADO, SANZ AND OPISSO.

(Signed)

CHICOTE AND MIRANDA.

Stamped: Filed on the 20th of April, 1908, at 8:10 a. m.

(Signed)

J. McMICKING, *Clerk.*

(Title of the Case Omitted.)

Now comes defendant Aldecoa and Company in liquidation, and answering plaintiffs' complaint alleges:

I.

That it admits the allegations contained in paragraph I, clauses a), b), c), and d) of the complaint.

II.

Admits paragraph III of the complaint.

III.

Denies generally and specifically each and every one of the allegations contained in paragraphs II, IV, V, VI, and VII of the complaint, with the exception of those facts expressly admitted in this answer as true.

* * * * *

54 As a special defense, defendant Aldecoa and Company in liquidation alleges:

I.

That plaintiffs Zoilo and Joaquin Ibañez de Aldecoa, were on and before the 23rd of February, 1906, minors, but that by reason of being over 18 years of age, they were emancipated by voluntary concession of their mother, Doña Isabel Palet y Gabarro widow of the late Don Zoilo Ibañez de Aldecoa y Aguirre, (who was legally authorized to do so), by virtue of the instrument ratified before a Notary Public on July 31, 1903, copies of which are attached to this answer and made part hereof, marked Exhibits "A" and "B."

II.

That on February 23, 1906, plaintiffs who were emancipated by voluntary concession of their mother, as above stated, and defendants, executed a contract ratified and signed before the Notary Public of this City Don Jose Maria Rosado, by which plaintiffs mortgaged certain real property of their own situated in the City of Manila, to secure the payment of a credit on account current which, up to the sum of four hundred and seventy-five thousand pesos Philippine Currency (P475,000), the defendants, The Hongkong and Shanghai Banking Corporation, had opened and bound itself to keep open in favor of the defendant Aldecoa and Company, part of which amount had been made use of by said Aldecoa and Company; the terms of said contract and the property mortgaged being the same which appear and are described in the above said
55 document which is attached to the original complaint of plaintiffs, marked Exhibit "A," and made part thereof; which contract, marked Exhibit "A" of the original complaint, is made part of this answer as if the same were attached hereto.

III.

That plaintiffs, at the time of executing the mortgages mentioned in the preceeding paragraph, being as they were, emancipated by voluntary concession of their mother, as aforesaid, acted with the consent of their mother by virtue of the document executed by the latter, copy of which is attached to this answer and made part hereof, marked Exhibit C.

* * * * *

Wherefore, defendant Aldecoa and Company in liquidation asks this Court to dismiss the complaint with the costs against the plaintiffs; and that this Court shall grant it whatever other remedy may be deemed just and equitable.

Manila, April 18, 1908.

(Signed)

ROSADO, SANZ AND OPISSO,
*Attorneys for Defendant Aldecoa &
Company in Liquidation.*

Received copy this 18th of April, 1908.

(Signed)

CHICOTE AND MIRANDA,
Attorneys for Plaintiffs.

56

EXHIBIT "A."

Emancipation.

In the City of Manila, Philippine Islands, this thirty first day of July, nineteen hundred and three; before me, Enrique Barrera Caldes, Notary Public of the same, personally appeared:

Dña Isabel Palet y Gabarro, widow of the Don Zoilo Ibañez de Aldecoa y Aguirre, property holder, of lawful age, and resident of this City, without exhibiting any cedula on account of being exempt therefrom by reason of her sex:

And Don Zoilo Ibañez de Aldecoa y Palet, without any special profession, over eighteen years of age, single, and resident of this City, with cedula number one hundred and seventy thousand nine hundred and twenty-one, issued by the Collector of Internal Revenue of this City for the present year.

And having, as I believe they have, legal capacity to execute this instrument, Dña Isabel Palet y Gabarro, states:

That acknowledging in her son Don Zoilo Ibañez de Aldecoa the faculty to rule his person and manage his property, renounces for herself the parental authority (*patria potestad*) which she heretofore had over his person and property, and by virtue hereof she empowers him from now on to manage by himself the property belonging to

him and that which in the future he might acquire, just
57 as if he were of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents either public or private, which may be necessary for the above named purposes.

Don Zoilo Ibañez de Aldecoa y Palet, on his turn states: that he accepts the emancipation granted him by his mother by virtue of the present document, being grateful to her for the benefit she thus confers on him.

In witness whereof, the above named parties ratify their statements before me, said parties being personally known to me, to be the persons above named, and swear that this is an act of their free will and deed, in the presence of the witnesses Don Candido del Rosario y Espíritu and Don Manuel Sansano y Arciaga, both clerks, of lawful age and residents of this City, who sign with them this docu-

ment which I authorize as Notary Public under my signature and the seal of my office, on the day, month and year above mentioned: to all of which I certify.

(Signed)

ISABEL PALET,

Widow of Aldecoa.

(Signed)

ZOILO IBANEZ DE ALDECOA,

(Signed)

CANDIDO DEL ROSARIO,

(Signed)

MANUEL SANSANO,

(Sgd.)

ENRIQUE BARRERA Y CALDES,

[NOTARIAL SEAL.]

Notary Public.

My Commission expires January 1st, 1905.

58

EXHIBIT "B."

Emancipation.

In the City of Manila, Philippine Islands, this thirty first day of July, nineteen hundred and three: before me, Enrique Barrera y Caldes, Notary Public of the same, personally appeared:

Doña Isabel Palet y Gabarro, widow of the Don Zoilo Ibañez de Aldecoa y Aguirre, property holder, of lawful age, and resident of this City, without exhibiting any cedula on account of being exempt therefrom by reason of her sex:

And Don Joaquin Ibañez de Aldecoa y Palet, without any special profession, over eighteen years of age, single, and resident of this City, with cedula number one hundred and sixty-one thousand nine hundred and seventy-eight, issued by the Collector of Internal Revenue of this City for the present year.

And having, as I believe they have, legal capacity to execute this instrument, Doña Isabel Palet y Gabarro, states:

That acknowledging in her son, Don Joaquin Ibañez de Aldecoa the faculty to rule his person and manage his property, renounces for herself the parental authority (*patria potestad*) which she heretofore had over his person and property, and by virtue hereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire,

59 just as if he were of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents either public or private, which may be necessary for the above named purposes.

Don Joaquin Ibañez de Aldecoa y Palet, on his turn states: that he accepts the emancipation granted him by his mother by virtue of the present document, being grateful to her for the benefit she thus confers on him.

In witness whereof, the above named parties ratify their statements before me, said parties being personally known to me, to be the persons above named, and swear that this is an act of their free will and deed, in the presence of the witnesses Don Candido del Rosario y Espirity and Don Manuel Sansano y Arciaga, both clerks,

of lawful age and residents of this City, who sign with them this document which I authorize as Notary Public under my signature and the seal of my office, on the day, month and year above mentioned: to all of which I certify.

(Signed)

ISABEL PALET,

Widow of Aldecoa.

(Signed)

JOAQUIN IBAÑEZ DE ALDECOA.

(Signed)

CANDIDO DEL ROSARIO.

(Signed)

MANUEL SANSANO.

(Sgd.)

ENRIQUE BARRERA Y CALDES,

[NOTARIAL SEAL.]

Notary Public.

My Commission expires January 1st, 1905.

60

EXHIBIT "C."

Number Seven Hundred and Twenty Two.

In the Villa of Madrid, on the thirteenth day of December, nineteen hundred and five: before me, Don Jose Criado y Fernandez Pacheco, Notary of the Illustrious College of this Court, and resident of the same, appears:

Doña Isabel Palet y Gabarro widow of Ibañez de Aldecoa, of lawful age, widow, land holder and resident of this City, living at number two, Galdo street with personal cedula of the second class, number thirty seven thousand six hundred and sixty two, issued on the fourteenth day of April last.

And having, in my judgment, the necessary legal capacity to execute this instrument, she

States.

That she grants Don Fernando Zobel y Ayala, of age, married, merchant and resident of Manila, Philippine Islands power of attorney.

For her and in her name, place and stead and representing her person, right and actions as share-holder of the firm of Aldecoa & Company domiciled in said City of Manila, to execute jointly with her sons Don Zoilo and Don Joaquin Ibañez de Aldecoa, who are also members of said firm, the necessary public instrument mortgaging in favor of the Hongkong and Shanghai Banking Corporation also

of Manila, P. I., all the real property which exponent and

her two sons own in the Philippine Islands, to secure said

Bank the reimbursement of what the firm of Aldecoa & Company is indebted to the same in consideration of the agreement had with the said Bank to the effect that the same shall wait for the term of five years to collect its credit or to have same reduced to a satisfactory amount, and secure the payment of the whole, without said Bank having a right to demand within said term the sale or conversion into money of the mortgaged property in order to collect what is due to the same, confining itself only to receive annually the sum of P50,000 on account of said credit; to determine the amount of

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the credit, to which end he may proceed to the liquidation of the same or he may conform with the liquidations already made, to consent to the other conditions which may be deemed proper and to see that the said mortgage deed shall contain whatever other requisites and circumstances be necessary for its validity and efficacy; the exponent granting also in favor of her children Don Zoilo and Don Joaquin Ibañez de Aldecoa in case it is deemed necessary, the proper authority or permission to mortgage their own property by said instrument for said purpose.

The exponent being present together with the instrumental witnesses Don Jose Alvarez y Cruz and Don Jose Garcia Camarena, of lawful age and resident of this capital, and this power of attorney having read by me to them after having advised them of their right to do it by themselves (of which right they made no use), the exponent gave her consent and signed jointly with the witnesses, and I, the Notary, hereby certify that I know the person executing this document and all the contents of this public instrument written on a single sheet.

(Signed) ISABEL PALET VIUDA DE ALDECOA.

(Signed) JOSE ALVAREZ Y CRUZ,

(Signed) JOSE GARCIA CAMARENA,

(Signed) JOSE CRIADO F. PACHECO.

I certify that the above is the first copy of its original, with which it agrees, and which under the number above stated is in my current protocole of public instruments where an entry has been made thereof. I issue this copy at the request of the person who executed this instrument, in this sheet of the seventh class, series A No. 142,147 and I seal and rubricate the same in Madrid on the day of its execution. Amended "donde" valid.

(Sgd.)

JOSE CRIADO F. PACHECO.

I, Maddin Summers, Vice Consul of the United States at Madrid, Spain, hereby certify that Jose Criado F. Pacheco, whose signature and rubric appear herein is a notary public of the City of Madrid whose signature is entitled to full faith and credit.

63 In witness whereof I have set my hand and seal of this office at Madrid, this 15th day of December, 1905.

[SEAL.]

(Sgd.)

MADDIN SUMMERS,

U. S. Vice Consul.

No. 559.

Fee \$2.00—14 Ptas.

(Title of the Case Omitted.)

To the plaintiffs herein and to Messrs. Chicote and Miranda Attorneys for said plaintiffs:

Please take notice that on Monday, May 25, 1908, at 3:30 p. m. the undersigned defendant in the above entitled case shall cause that the depositions of Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa be taken before the Hon. Manuel Araullo, Judge of the

Court of First Instance of the City of Manila, Part III, at calle Palacio No. 47, Walled City, Manila.

Said depositions shall be taken under and by virtue of paragraph I of Section 355 of the Code of Civil Procedure, as it is more amply stated in the attached affidavit of Charles C. Cohn, which is made part hereof.

Manila, P. I., May 19, 1908.

(Sgd.) HAUSSERMANN, COHN & FISHER,
CHARLES C. COHN,
Attorneys for the Defendant The
Hongkong & Shanghai Banking Corporation.

64 Received copy this 19th of May, 1908.

(Sgd.) ROSADO, SANZ & OPISSO,
Attorneys for Aldecoa and Company in Liquidation.
(Sgd.) CHICOTE & MIRANDA,
Attorneys for the Plaintiffs.

(Title of the Case Omitted.)

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

Charles C. Cohn, being first duly sworn, deposes and says: That he is now and has at all times hereinafter mentioned, been an Attorney at Law duly licensed to practice his profession in the Philippine Islands, and is one of the Attorneys for the defendant The Hongkong and Shanghai Banking Corporation in the above entitled case; that Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, the parties whose depositions it is desired to take in said case, are the parties litigant in this action, to wit, the only parties plaintiff in this action.

And further deponent sayeth not.

(Sgd.)

CHARLES C. COHN.

Subscribed and sworn before me this 19th day of May, 1908.

Sgd.)

JOHN N. HAUSSERMANN,

[NOTARIAL SEAL.]

Notary Public.

My Commission expires on December 31, 1908.

65 After being duly subpoenaed, the deposition of Joaquin I. de Aldecoa y Palet was taken before the Commissioner appointed for that purpose by the Hon. Manuel Araullo, Judge of the First Instance of Manila, on the 25th of May, 1908. Said deposition, filed at the trial of the case as Exhibit "B", is as follows:

EXHIBIT "B."

UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Manila.

Part III.

Civil. No. 6086.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET, and ZOILO IBAÑEZ DE
ALDECOA Y PALET, Plaintiffs,
against

ALDECOA Y COMPAÑIA EN LIQUIDACION E ISABEL PALET GABARRO
Viuda De Aldecoa, y The Hongkong and Shanghai Banking Cor-
poration, Defendants.

MANILA, P. I., May 25, 1908.

In compliance with an order issued by Hon. Manuel Araullo, Judge of the Court of First Instance of Manila, delegating the Deputy Clerk, Carlos A. Sobral to take the deposition of Don Joaquín Ibañez de Aldecoa y Palet.

66 Being present said Don Joaquín Ibañez de Aldecoa y Palet, one of the plaintiffs in the above entitled action, accompanied by his attorney Don Alfredo Chicote, and Mr. Charles C. Cohn on behalf and as counsel of defendant The Hongkong & Shanghai Banking Corporation.

Mr. Chicote calls the attention of Mr. Sobral as the Court's Commissioner to take this deposition, to the fact that he does not see any reason why Mr. Cohn, Attorney for plaintiff, can offer the evidence which he now pretends to.

Mr. Cohn has answered denying generally the facts said in the complaint without making any special defense and therefore he has nothing to prove; there is no reason then for the taking of this deposition.

This party desires to know what grounds, if any, are there for the taking of the deposition of this plaintiff.

Mr. Cohen: The Code of Civil Procedure authorizes the parties to ask for the deposition of any other of the parties litigant, in order to be able to base the answer or defense thereon; and in that provision of the law this party bases its right to ask for this deposition.

Mr. Chicote: That right could have been exercised before filing the answer by the defendants but not after the answer has been attached to the record. For, in this case, the deposition asked
67 by Mr. Cohn, as attorney for the defendant, could have no force or effect.

Mr. Sobral states that: The Court shall decide what may be deemed proper in regard to this question.

Testimony of Don Joaquin Ibañez De Aldecoa.

After being duly sworn, states that his name is JOAQUIN IBAÑEZ DE ALDECOA Y PALET, living in Manila, Calle Real of Malate, No. 557, Clerk.

Direct examination by Mr. Cohn:

Q. How old are you?

A. Twenty-four years since March 27, last.

Q. Are you one of the plaintiffs in this case?

A. Yes; but I do not know what case you are referring to.

Q. The case of Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet, plaintiffs, against Aldecoa and Company in liquidation, Isabel Palet y Gabarro, and The Hongkong and Shanghai Banking Corporation.

A. Yes sir.

Q. You are one of the parties who executed a certain mortgage in favor of the Hongkong and Shanghai Banking Corporation on the 23rd of February, 1906?

A. I do not remember the date, but I believe I have heard something about that document.

68 Q. How long before the execution of that document had you been in Manila?

A. I do not know, because I have a very poor memory in regard to dates. I cannot remember them at all.

Q. How long have you been living in Manila?

A. I have lived * * * several times. I was born here. I have been in Europe, in Spain, in London * * * I have been here in Manila almost always, but for some time I have been away.

Q. When did your actual stay in Manila start?

A. About four years or three years and a half ago. At present, without having left here; without having left the Islands.

Q. Do you know the exact date of your arrival from Spain?

A. No. I have told you already that I have a very poor memory for dates.

Q. Was it in the year 1904?

A. Thereabouts.

Q. From the last time you came back from Spain to Manila, what have you been devoting your time to?

A. I have been clerk in commercial house.

Q. What commercial house.

A. At present I am with the firm of Jose Maria Ibañez de Aldecoa, and before, I was with the firm of Aldecoa and Company, as clerk.

Q. Your employment with the house of Aldecoa and Company started on your return from Spain?

69 A. Yes; if you call that employment. I used to go to the office but I had nothing to do. If you call an employee a person who goes to the office and has no fixed work to do.

Q. When did your employment cease?

A. When the firm went into liquidation. When the firm of Aldecoa and Company ceased to exist.

Q. Can you tell the circumstances preceeding the execution of that mortgage?

A. This seems to be a farce. In the year 1905, Mr. Alexander S. Macleod called me and said to me: "The firm of Aldecoa and Company owes a good deal of money to the Hongkong and Shanghai Banking Corporation". That the Hongkong Bank, was pressing and the Director called him almost every day and always spoke to him about the balance, and it was necessary to pay that balance by all means; that this could not continue that way; that if the balance was not paid, and his demands were not met, he would crush the firm of Aldecoa and Company. Mr. Alexander S. Macleod told me also that there was a great remedy for this. I told him that it was he who had gone into this and therefore it was his duty to find a remedy for it. Don Alejandro said that it was so; that he had been managing the firm, but that every bo-y else should try and help to find the means. I asked Don Alejandro what kind of remedy
70 he thought could be found, because I could see none; that I was very young without knowledge or experience in these matters, and that it was he who was obliged, since I thought he was acting as our father at that time, and he should say what he thought was right for us to do. Don Alejandro answered me that he saw only one solution; the mortgage of our private property to the Hongkong Bank. I answered Mr. Alexander S. Macleod that really I could see in that solution nothing good for us and that I did not understand how could we gain anything by putting our money there, mortga-ing our property. Don Alejandro answered me, after a long discussion, during which I refused and he was trying to convince me, telling me that we had to take in consideration that he was older and had more experience than we had, that we were here under him and we had to do what he told us. I told him that was true, but before doing those things, he had to consult our mother who was at that time in Spain. So time passed, and several discussions were had about this matter. Don Alejandro called me, but I pretended not to know it and we had several disputes.

Shortly after this, Don Alejandro sent for me again and told me that he had consulted with my mother, and that she intended to do what he had said. I answered him that my mother might
71 think as she chose in regard to this matter, but that I, really, did not like to give property in order to save money which he said was due to the Bank but which we did not know how it went there, nor of what nature it was since I was not informed of anything.

Mr. Alexander S. Macleod, then, started to tell me that it was for our good name, to save the name of our father, to save larger interests; that it was to save the money of our mother in the firm; that if we did not acced to his request, the Bank would fall upon the firm and that finally it would exhaust us and ruin us, crushing us forever; that we did not know what would happen to us, and where we would be driven to. I told him: "Don Alejandro, all you say

may be true, but I do not think it shall be right. I do not see any reason why it must be so." He then started again to tell me that it was for the good name of our father, and for our reputation, and at the same time he told me that they agreed to that because we had a certain deposit drawing interest in the firm, and that we would lose that amount if we did not accept that offer: that if we consented to the mortgage that amount would be saved, if not all, at least the greater part of it. And after so much advice, he told me that anyhow our property was already lost; that the firm was in very bad

72 condition that the property, with or without mortgage, was lost; that if we consented to the mortgage the Bank would grant a longer term on good conditions and that things would then get better, and we would come to a settlement, and our money then lost would be recuperated, and the name of Aldecoa would remain as ever was. I resisted, and always told him no, and no. He told me that he had instructions from my mother and to speak to my brother in law, Mr. Fernando Zobel.

I spoke with Don Fernando Zobel, and he told me almost the same things as Don Aleiandro did, but, as I am in more familiar terms with Don Fernando Zobel than with Mr. Alexander S. Macleod, I sent him to mind his own business.

After some time, Don Fernando Zobel showed me a letter from my mother where she said that it had to be done, and in view of the fact that my mother on the one side, and Don Aleiandro (who was then acting as our father and was at that time in charge of us) on the other, said that anyhow all was lost and that this was the only way to save our money, I signed that document, without knowing what I was doing. I have signed that document, but I have not noticed it, nor paid attention to it. One day they read the document, but I did not concern myself with it, nor paid any attention to what was said in it. They said to me: "sign that", and I signed it. They insisted on my signing and I did.

73 Q. Did you hold any conference with the Bank or with the Agent of the Bank in regard to the execution of that instrument?

A. Yes, Don Aleiandro told us, as I have just stated, that the Bank was pressing and that the best thing was that we should speak with the Manager of the Bank. When he presumed that I was inclined to sign the document, he told my brother Zoilo and me to go with him to the Bank to speak with the Manager. The three of us went to the Bank: Mr. Alexander S. Macleod went directly to see the Manager and Agent of the Bank; we waited outside in an anteroom. I do not know what conversation passed between Don Aleiandro and Mr. Jones, but after a while, about ten minutes after they had been talking, they made my brother and me enter, and then Mr. Jones began to say that he would have no consideration, that he would crush the firm of Aldecoa and Company, that if we did not accede to his demands, within a fixed and short time, he would make formal demand for the payment of that amount and that in case the debt of the firm was not paid, he would do everything within his power to down all of us, and then we would have no other way but to accept.

My brother and I did not know what to say. They were Don Alejandro's advisers, but we resisted to accept that. Mr. Jones said
74 that we had to accept, that things could not continue that way.

Then Don Alejandro again told us that for the honor and good name of our father, that for our own interest, in order to save greater interests—well, everything which he had told us before and I have just stated; and after a long discussion, we told the Manager of the Bank that whatever Mr. Alexander S. Macleod desired, would be done, and that it was for them to speak.

Q. On what date did this occur?

A. Mr. Cohn, I have very poor memory for dates. I told you that all this occurred about the end of the year 1905.

Q. Can you tell us how many days before the execution of the mortgage?

A. I cannot tell exactly. There was an interval; but I cannot say exactly how long.

Q. When and where did the other conferences with Mr. Jones take place?

A. Once, I think, he came to the office, and I believe that other times we went to the Bank with Mr. Alexander S. Macleod.

Q. At whose request?

A. Mr. Alexander S. Macleod's. Mr. Alexander S. Macleod said that it was Mr. Jones who called us, but we went with Don Alejandro.

Q. What happened during the other conferences with Mr. Jones?

75 A. Almost the same. We left frightened and used to tell Don Alejandro: "You see what Mr. Jones says?" and Don Alejandro again explained to us and told us: "Those are fits of bad humor" or something like that so as to keep up our spirits; "That is of no importance."

Q. What did Mr. Jones tell you that you were frightened?

A. He said that *that* all the money of the firm was to be lost, that he was going to have the account closed and open another, and as the firm of Aldecoa and Company had a deposit at 6% he threatened us that sum would disappear.

Q. And did Mr. Jones tell how that catastrophe would befall to the firm of Aldecoa and Company?

A. If his request to sign that mortgage deed was not complied with, the catastrophe would come. That he would give a fixed term to the firm, within which to pay that amount, but that it would be quite impossible for the firm to pay it, as he himself said.

Q. What amount?

A. The amount which the firm of Aldecoa and Company owed the Bank as Mr. Alexander S. Macleod explained to us.

Q. What else did he say?

A. That same thing. That the only solution was to sign the mortgage deed; that we would be prejudiced. That it was nothing for them; that they did not require anything about the houses.

76 but it was the Bank; that he would give time to the firm within which said firm would continue to do business and pay religiously; that they would leave a percentage of the money and the

money would not be lost; that my mother would not claim any money and that we would all be very pleased.

Q. Did Mr. Jones or the Hongkong Bank tell you in writing anything about the execution of that mortgage deed?

A. Not to me. As I was a simple Clerk there, a nobody, a mere employee, and had no fixed duties, the Director of the Bank did not address us; he addressed Aldecoa and Company or Mr. Alexander S. Macleod, and the latter and Mr. Jones were the ones who kept us advised.

Q. Did you read the letters crossed between Aldecoa and Company and the Bank about the agreement in regard to the deed?

A. I remember to have read some letters.

Q. Do you remember the character and importance of those letters in regard to what Mr. Jones had told you personally?

A. Not the letters; but that Mr. Jones was going to crush the firm of Aldecoa, and he said that it was necessary to pay the balance and that things could not continue that way, and to find any
77 means to avoid this. He did not write precisely the words "to crush the firm" but something to the same effect.

Q. Did Mr. Jones tell to the firm, especially in those letters read by you, that in the absence of a guarantee of this character he would execute the debts of the firm?

A. He said in the letters that it was necessary to settle this debt; in some letter which I have read; I do not remember the date, no, did I pay much attention.

Q. Do you remember how long before executing that deed of mortgage you decided to sign and give your consent to the execution of the same?

A. I did not decide to sign. Up to the last moment I resisted, and up to the last moment they kept on telling me that it was the only solution and that it was necessary; and in view of all this, and that they told me that it was the only solution and it was necessary to do this, I did it, but it was quite against my will.

Q. Your mother who was in Spain decided to sign the document before you did?

A. My mother dealt directly with those gentlemen; but I did not deal directly with them in this matter. Don Alejandro said that he had the consent of my mother, and Don Fernando Zobel, who
78 was my mother's attorney in fact, ordered me to sign.

Q. Did you write your mother about this?

A. No Sir.

Q. Did you not communicate directly with your mother in regard to the execution of the mortgage?

A. I do not remember whether I did it or not. But if I did, it was in an ordinary letter, just in a paragraph. But I do not remember to have written any special letter about this particular subject.

Q. In those conferences which you have just said you had with Mr. Jones, it was when Mr. Jones induced you deceitfully to execute this instrument?

A. I want you first to tell me what do you mean by deceitfully dolosamente.).

Mr. Chicote: Maliciously, with deceit, cunningly—

A. Yes. In those conferences and in the conferences which I had before with Mr. Alexander S. Macleod, who were the ones who made me sign.

Mr. Cohn: That is all.

Mr. Chicote does not cross-examine the witness.

■ ■ ■

I Certify that the above testimony is the faithful and true transcript of the notes taken by the undersigned at the time of the taking of the deposition of Don Joaquin Ibañez de Aldecoa y Palet.

(Signed)

JULIO JIMENEZ JEREZ,
*Official Stenographer of the Court
of First Instance of Manila.*

■ ■ ■

79

(Title of the Case Omitted.)

I, Carlos Alvarez Sobral, Certify: That in compliance with an order issued by the Honorable Manuel Araullo, Judge of the Court of First Instance of Manila, I, being the Deputy Clerk of said Court, by express delegation of the said Judge and with the consent of the parties litigant, received the deposition of the witness Don Joaquin Ibañez de Aldecoa y Palet, who appeared before me on the 25th day of May, 1908, being present at the time the Attorneys Don Alfredo Chicote on behalf of the plaintiffs and Mr. Charles C. Cohn, for the defendant, The Hongkong and Shanghai Banking Corporation; said Joaquin Ibañez de Aldecoa took before me the oath required by law and said oath and the testimony of the witness were taken in this Court, on said date, the stenographer taking the notes with the consent of both parties being the official stenographer of this Court Don Julio Jimenez Jerez, who certifies to the correctness of the transcript of said notes.

That both parties, by common agreement, stated that the taking of the deposition was at an end, reserving themselves the right to obtain copies from the transcript of said deposition from the official stenographer Don Julio Jimenez.

Manila, July 27, 1909.

(Signed)

C. A. SOBRAL,
Ex-Deputy Clerk of the Court of Manila.

80

(Title of the Case Omitted.)

Answer of the Defendant, Isabel Palet y Gabarro.

Now comes the defendant Doña Isabel Palet y Gabarro, widow of Aldecoa, and in answer to the complaint states:

That she denies generally and specifically the facts alleged in the complaint, in whatever they disagree with the following:

Special Defense.

I. That on July 31st, 1903, plaintiffs being minors, she, as mother of said plaintiffs, after previously having had a consultation with the Managers of Aldecoa and Company and with the Notary who authorized the document to which the complaint refers, executed, as it is stated in the complaint, said document; but she did not know then and does not know at this time, whether or not such an act was legal; and on executing the said document, or letters of emancipation, it was the purpose of this defendant that her children, the plaintiffs herein, should govern their own property and especially what they had in the firm of Aldecoa and Company, of which firm she considered them as members, by reason of the contract of partnership, and this defendant also well knew that they were creditors of that firm.

II. That she, on executing the letters of emancipation in
81 favor of plaintiffs, did so in the belief that she had parental authority over her children, and that it was an act permitted by the laws of the Philippine Islands, not having received any information, during the whole time prior to the date when she received copy of several complaints filed by her children against her, that from the year 1901, she had no right of parental authority over her children, plaintiffs herein; nor her children had then and for a long time afterwards, enough judgment to manage their property in the Philippine Islands, inasmuch as she is informed now, and she does so believe and allege, that the documents dated on the July 31st, 1903, to which the complaint refers, are not letters of emancipation according to law.

III. That on or about the last days of the month of November, 1905, this defendant residing then in Madrid, Spain, received a letter from "Aldecoa and Company" written and signed by Mr. Alexander S. Macleod, Managing partner of said firm, which letter reads as follows:

MANILA, October 18, 1905.

Mrs. Isabel Palet, Widow of Aldecoa, Madrid.

DEAR MADAM: We regret hereby to inform you as to the condition in which the matter of the Hongkong and Shanghai Banking Corporation with this firm is at the present time, it being necessary
82 and indispensable to take a definite resolution on account of the urgency of the case, since if we do not take a prompt resolution you, as well as this firm and the rest of the partners, would have to suffer fatal consequences.

Our good friend and relative, Don Fernando Zobel has been advising you often and in detail about this matter and its different aspects and for that reason we have not done so, since doubtless he, with more details and means of persuasion than we can have, has written you; but so far, up to the present, we have not been

fortunate enough to find an echo in you to bring this matter to a settlement.

We enclose herewith a duplicate copy of the letter of said Bank under the seal of the same, in English, dated the 7th of this month, together with its translation in Spanish, and by reading it, you will see that the proposition which that gentlemen sent to Hongkong (of which Mr. Zobel has told us he has advised you), has been rejected, and on the other hand said Bank demands the payment of the total amount of the debt on or before December 31, 1905, that is to say, of this year, but in order to avoid any injury to the firm it would be ready to leave the debt standing, provided it were duly secured with the mortgage of the private property of

83 the partners in the Philippines, and up to the necessary amount to cover the security for the value of the loan or credit of the bank. We beg to call your attention to the fact that the bank demands in the first place the full payment of the total amount owed by this firm and only in the second place it would accept the mortgage of the property to the bank so as to let the firm continue its business without demanding in that case the total payment of the debt for the last day of this year.

We also enclose herewith the original letter and its translation into Spanish (which we received three days ago) written by Messrs. Coudert Bros. attorneys for the Bank on the 9th of the present month, by which you will see that they act under orders received, and as formal confirmation of that which was addressed to us by Mr. Jones on the 7th of the present month, in which letter said attorneys tell us that the firm must pay the full amount of its debt up to December 31st of the present year, or else secure that debt in the manner stated by the Hongkong Bank and to the satisfaction of said bank. We have spoken with the manager of the Hongkong Bank as to the manner and conditions in which the liquidation of the firm could be made in case that the partners thereof

84 should choose to go into liquidation and he answered us that the liquidation would be slow and without intervention from the bank provided, of course, that the bank should be secured with the private property of the partners in the manner already stated, since, if this is not done, the liquidation would be made through the Courts and both the attorneys of the bank as well as the intervenor, would intervene and the liquidation would proceed under one or several receivers.

Inasmuch as, whether the firm continues doing business freely, or goes into liquidation without the intervention of the bank, the partners of the firm must offer their private property in the Philippines as security, we believe that this condition must be accepted in order to avoid the great prejudice which would be caused by a judicial liquidation which would bring greater losses than liquidating slowly without the intervention of the Bank.

As you will see from the letter of the Director of the Bank of the 7th of this month, should the firm continue, (giving, of course, the above named security), the bank could not foreclose the mortgages

for a period of five years, unless the firm should go into liquidation and then only as a last resort. There would also be left the obligation to pay the yearly sum of P50,000 in order to reduce the
85 amount of the debt. For your knowledge we must tell you that on closing up our Cash Book to-day, the balance we owe to the bank amounts to P423,813.29, and from the month of July our debt has not exceeded P500,000 which was the maximum amount fixed for the 31st of December of this year, since the limit of P450,000 has been fixed for December 31st, 1903, so that we can tell you now off hand that we are within the terms of our obligation for the year 1905; and although at this moment the balance is in fact too small, due to a considerably large deposit made in said Bank, and it must come up to a larger sum, yet we shall do all in our power to keep within the limit of P500,000 thus complying with our side of the agreement.

We beg you to consider that within the term of five years which the bank gives us (should the security be given) there is plenty of time to reduce the balance within that term and, perhaps, to have the total amount of our debt fully paid, to which end we shall devote all our energies.

We also advise you of the fact that we are doing all in our power to have our consignors from the provinces reduce their debts and we are succeeding gradually, and as a proof of it, there is the reduction of our debt to the bank which, having reached at the middle of this year the amount of P550,000—and at one time P560,-
86 000—we do not exceed now by far the sum of P500,000.

In consequence of all we have said, we believe that your coming to this country is necessary, and the sooner the better, accompanied, at all events, by some person who may sustain your ideas and keep you advised in order to discuss the matter here and adopt the resolution which you may deem most convenient to your interest as well as to the interest of this firm; should you not be able to come personally to this country accompanied by a person of your confidence, we believe that you must send that person immediately with full power of attorney, since it would be regrettable that disaster should befall us for not coming on time and that you should repent later for not having done so. We understand that we must discuss immediately what resolution are we to adopt in this matter, having in mind, of course, the good name of this firm, its interests and the interest of all its members, and we are of the opinion that the matter must be discussed here, with all the data and information in sight, since the mere interchange of correspondence at this moment we consider it suicide, inasmuch as the Bank gives us a very short term, which we might try to have it extended by reason of the call we make on you to come or to send a person of your confidence with full
87 power. It would, really, be a pity that in the end they should take possession of the property which it is now refused to give as security.

Expecting your prompt resolution and asking you to send us a

telegram advising us whether you are coming personally or sending us a person of your confidence, we beg to remain.

Yours very sincerely,

ALDECOA & COMPANY,
By MACLEOD.

IV. That in view of such letter, and fearing to see herself totally ruined and to see her children in the same condition: without being aware then that her said children were not general (colectivos) partners, and not even partners, of Aldecoa & Company and that the property of the plaintiffs in this case could not, therefore, as it is said in the above transcribed letter, go to the bank, not even the property of this defendant: being ignorant of the real condition of the affairs of Aldecoa & Company and frightened by the contents of said letter and by the date fatally fixed in the same, (December 31st, 1905), she went to her usual Notary in Madrid, Don Jose Criado, who, in view of the said letter and of the references given by this defendant, extended a special power of attorney in favor of Don Fernando Zobel, which power of attorney to which the complaint seems to refer was signed by this defendant on December 13 of that same year, and by which Don Fernando Zobel, representing this
88 defendant and assisting her children, plaintiffs herein, executed in Manila the document dated February 23, 1906 referred to in paragraph II of the complaint.

V. That the consent given by her to her children, plaintiffs herein, to mortgage their property, was an act done by this defendant without reflection, and was given by her, under error, by reason of the circumstances above given, to wit:

(a). That she then believed that her children were general partners in the firm of Aldecoa and Company as stated in the said document of December 13, 1905.

(b). That there was imminent danger that the Hongkong and Shanghai Banking Corporation of Manila, creditor of Aldecoa and Company should take possession of all the property of her said children; and

(c). That her said children, plaintiffs herein, were legally emancipated and she could give them her consent.

VI. That acting under such errors she instructed her attorney in fact, Mr. Zobel, to advise her children, plaintiffs herein, by all means to accept the mortgage on their own property, to do honor to their father's "name", and do it in interest of this defendant and the other partners of Aldecoa and Company and in the interest of the good name and credit of the firm.

89 VII. That if this defendant should have known at such time that by the contract, of February 23, 1906, "the then manager of Aldecoa & Company, Mr. Alexander S. Macleod, sought to conceal from the partners of Aldecoa & Company, and more especially from this defendant, frauds committed by him and his co-managers in the administration of Aldecoa & Company and in the private property of this defendant", as alleged by plaintiffs; if she had known that the statements contained in the above copied letter

were exaggerated and cunning; if she had known that her children were not then partners in the firm of Aldecoa & Company and that their property did not run any risk of disappearing or of ruin; and if this defendant had known that it was not necessary or legal that her children, plaintiffs herein, should encumber their property, as it has been done, in that case this defendant would not have acted as she did through the instrument of December 13, 1905, nor would she have consented that her children should mortgage and encumber their property in the manner it has been done by the document of February 23, 1906, referred to in the complaint.

The defendant asks this Court that, considering the statements herein made, the remedy asked for in the complaint be granted without thereby holding this defendant liable.

Manila, July 6, 1908.

(Sgd.)

MAXIMINO MINA,

Attorney for Doña Isabel Palet viuda de Aldecoa.

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Received copy this 8th day of July, 1908.

(Sgd.)

ALFREDO CHICOTE,

For Chicote and Miranda, Attorneys for Plaintiffs.

The case having set for hearing for the 22nd of July the parties hereto filed an agreement, which was approved by the Court, to have the hearing postponed until further application by the parties.

On November 17, 1908 plaintiffs filed an amended complaint which is as follows:

(Title of the Case Omitted.)

Amended Complaint.

Now come the plaintiffs and allege:

I.

(a). That they were born in the Philippine Islands, residing at the City of Manila, Joaquin Ibañez de Aldecoa being 23 years of age, and Zoilo Ibañez de Aldecoa 22 years of age, the latter making his appearance with the assistance of his guardian ad litem Don Vicente Miranda y Dyce who has been appointed ad hoc by the Court of First Instance of Manila.

(b). The defendant, "Aldecoa Compañia en liquidacion" is a general mercantile partnership, (sociedad mercantil regular colectiva), domiciled in Manila, and registered in the Mercantile Registry of this City, being at present in its period of liquidation on account of the expiration of its term of duration, Mr. William Urquhart being the liquidator of the same, having acted and continuing to act as such from the month of January, 1907.

(c) The defendant Isabel Palet y Gabarro, is the widow of Don Zoilo Ibañez de Aldecoa, merchant, domiciled in Manila, and residing at present in Madrid, Kingdom of Spain, being the owner

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of real property situate in the Philippine Islands, and one of the partners, in fact, the main and most important partner, of the firm "Aldecoa y Compañia en liquidacion."

(d). The defendant The Hongkong and Shanghai Banking Corporation, is a banking corporation duly established and organized, which has been, and continues to be engaged in business in the Philippine Islands, being registered as such Corporation in the corresponding Registry, with its place of business open at Plaza de Cervantes, District of Binondo of this City.

II.

On July 31, 1903, plaintiffs herein, Joaquin and Zolio Ibañez de Aldecoa, being minors and owners of a large amount of both real and personal property in the Philippine Islands, the
92 defendant Doña Isabel Palet Gabarro mother of said plaintiffs, acting in violation of the laws in force in the Philippine Islands, without capacity, authority or permission therefor, by documents ratified on that date before the Notary Public, Don Enrique Barreara y Caldes, Manila, P. I. stated the following:

That acknowledging in her son (she referred to her sons, Don Joaquin Ibañez de Aldecoa y Palet and Don Zolio Ibañez de Aldecoa y Palet) the faculty to rule his person and to manage his property, renounces for herself the parental authority (*patria potestad*) which she heretofore had over his person and property, and by virtue thereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire, just as if he were of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents either public or private which may be necessary for the above named purposes.

Plaintiffs allege that, by virtue of recent information by them acquired, they know now, and so do they believe and allege, that at the time the document above referred to was made and ratified, Doña Isabel Palet Barbarro did not exercise her parental authority nor any other authority or legal representation over them.

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III.

On February 23, 1903, plaintiffs and defendants signed a document ratified before the Notary Public of Manila, Don Jose Maria Rosado by which document the plaintiffs, acting on the belief and under the impression that they were members of the firm Aldecoa and Company, executed a mortgage on certain real property owned by them, situated in the City of Manila, to secure the payment of a considerable sum of money amounting to P475,000 which, it was said, the Hongkong and Shanghai Banking Corporation had credited to the current account of the firm of Aldecoa & Company. The terms of said document being such as appear in the said deed, copy of which is attached to this complaint, marked "Exhibit A," and the contents thereof made part hereof as if the same had been

inserted in the body of this complaint, so that a better knowledge be had as to the obligation contracted by these plaintiffs.

IV.

Plaintiffs allege that at the time they signed the above mentioned document of February, 23, 1906 and gave the mortgage security appearing therein on the real property belonging to them and described in such document, they were minors and were not emancipated nor could they be so legally and validly under the laws in force in the Philippine Islands and they had no guardian
94 of their persons and property and in fact they concurred and intervened in the execution of said document of February 23, 1906 under the erroneous belief that they were partners in the firm of Aldecoa and Company, and without the assistance of a guardian or any other valid and legal representation and without the consent or legal authority required by law even in case they had been emancipated minors.

V.

Plaintiffs allege furthermore that they were deceitfully induced by Mr. Alejandro S. Macleod, as manager of Aldecoa & Company, and by Mr. Harris Davies Campbell Jones, as manager of the Hongkong & Shanghai Banking Corporation, each by himself and each in collusion with the other against these plaintiffs in order that these plaintiffs should, as in fact they did, intervene, mortgaging their real property described in "Exhibit A" to the prejudice of these plaintiffs and to the benefit of the defendants and each one of them who, as these plaintiffs are now informed, deceitfully knowingly and untruthfully, in order to induce these plaintiffs to sign that document abusing of their inexperience, made to these plaintiffs the following false cunning and deceitful statements and representations:

(a). That these plaintiffs were legally and validly emancipated and that these plaintiffs were partners in the firm of Aldecoa & Company.

95 (b). That Doña Isabel Palet, mother of these plaintiffs ordered them to intervene and execute the said document jointly with her, who would do the same through her attorney Don Fernando Zobel.

(c). That the purpose of said document was directed only to save the name and commercial reputation of the father of these plaintiffs.

(d). That by said document it was sought to secure a debt contracted by the father of these plaintiffs and it was also in part directed to obtain money from the Hongkong & Shanghai Banking Corporation for Aldecoa & Company in which firm these plaintiffs were industrial partners.

(e). That such document as regards these plaintiffs and Doña Isabel Palet was merely a nominal guarantee without any effect, for

the reason that Aldecoa & Company was the only debtor, the same being quite solvent.

All of which statements and representations, according to a later and recent information acquired by these plaintiffs, who so believe and do allege, were and are false and deceitful, and directed only to induce these plaintiffs to error, making them consent and subscribe that document.

VI.

Furthermore, plaintiffs allege: That the said document of February 23, 1903, contains as regards these plaintiffs and in
96 general, a false consideration, inasmuch as it is not true, as in the above referred document is said, that these plaintiffs are partners in the firm of Aldecoa & Company or that the defendant, the Hongkong & Shanghai Banking Corporation had ceded or opened any credit in favor of the defendant Aldecoa & Company; and these plaintiffs know now and do so allege, that such document is only an acknowledgment made by Aldecoa & Company of its indebtedness to the Hongkong & Shanghai Banking Corporation for the sum P475,000, as an amount liquidated and payable at that time, and by concealing this fact, they did thereby make these plaintiffs believe that the purpose of such document was to grant a new credit to Aldecoa and Company, of which company the defendants made plaintiffs believe that they were members, and that if the mortgage was not executed, plaintiffs would lose all their property as collective or general members thereof.

VII.

These plaintiffs also allege that there was no consideration whatever for them to execute the above said document: that at the time when they were deceitfully induced to execute the same, as above said, Aldecoa & Company was, as it is at the present time, insolvent, and the time for its dissolution being near at hand, its term of
97 duration being about to expire, and it was in fact dissolved by operation of law on account of loss of its capital; and at such time, as it is already stated, these plaintiffs were minors and were not or could be legally and validly emancipated, nor legally or validly represented, and this fact was well known by the managers of Aldecoa & Company and by the manager of the Hongkong & Shanghai Banking Corporation; and likewise, the defendants herein, through their agents, well knew that the consent which these plaintiffs gave in the above said document had been given under the erroneous belief that they were members of Aldecoa & Company and that said consent was null and void and the authority and consent which in said document their mother Doña Isabel Palet is said to give them through her attorney in fact Don Fernando Zobel, was an unlawful act, in violation of the laws in force; and said defendants through their agents also well knew, but deceitfully concealed it from these plaintiffs, that the supposed membership of these

plaintiffs as partners in said firm and the supposed emancipation of these plaintiffs therein alleged, and the alleged consent of their mother, were and are false, fraudulent and against the laws, and were made use of by the defendants deceitfully to derive for themselves the benefit of the security given by these plaintiffs and cause them damage by reason of the insolvency and dissolution of the firm of Aldecoa and Company, which insolvency and dissolution were known to the defendants and said defendants concealed these facts from plaintiffs so that the frauds committed against the partners of Aldecoa & Company and in the private property of Doña Isabel Palet and of these plaintiffs and their sister Doña Cecilia Ibañez de Aldecoa, should not be discovered, said frauds being committed by the managing partners of Aldecoa and Company and especially by Mr. Alexander S. Macleod, all of them being great friends of Mr. Harris Davies Campbell Jones, Manager of the Hongkong and Shanghai Banking Corporation who was not ignorant of some of the frauds committed.

Wherefore, plaintiffs ask that judgment be rendered in their favor and against the defendants:

(a) Finding and decreeing that the appearance and execution by these plaintiffs of the contract of February 23, 1906, which is attached hereto, marked "Exhibit A", and made part hereof in whatever pertains hereto, is null and void, unlawful and in violation of the law.

(b). Finding and decreeing that the obligation contracted and the mortgage executed by virtue of said document on the real property belonging to these plaintiffs and described in said "Exhibit A", which is made part hereof in whatever it may pertains hereto, are both to wit: said obligations and said mortgage, null and void and of no effect in regard to these plaintiffs.

(c). Finding and decreeing, by virtue thereof, that these plaintiffs be declared exempt from any obligation and liability, and their property above referred to released from the mortgage executed thereon by virtue of said document dated February 23, 1906.

(d). Granting these plaintiffs whatever other remedy which this Court may deem just and equitable, and the costs of this suit.

Manila, — of October, 1908.

CHICOTE AND MIRANDA,
By ALFREDO CHICOTE.
Attorneys for the Plaintiffs.

Received copy and we agree that the amended complaint be admitted.

pp. (Sgd.) HAUSERMANN & COHN.
(Sgd.) CHARLES C. COHN.
(Sgd.) MAXIMO MINA.
ROSADO, SANZ & OPISSO.

Stamped: Filed on the 17th of November, 1908 at 10:30 a. m.
(Sgd.) J. McMICKING, *Clerk.*

(Title of the Case Omitted.)

To the plaintiffs herein and to Messrs. Chicote and Miranda, attorneys for plaintiffs.

100 Please take notice that on Saturday, November 28, 1908, at 8:00 a. m. or as soon thereafter as possible the undersigned defendant shall move and ask this Honorable Court in Part II thereof, No. 47 Calle Palacio, Walled City, City of Manila, to order that the following portions of the amended complaint be stricken out, to wit:

1. At page 2, paragraph II of said amended complaint the words, "acting in violation of the laws in force in the Philippine Islands, without capacity, authority or permission therefor."

2. At page 2, paragraph II of the amended complaint all of the clause starting with the words, "plaintiffs allege that" and ending with the words "authority or legal representation over them."

3. At page 3, paragraph IV of the said amended complaint, the words "and were not emancipated nor could they be so legally and validly under the laws in force in the Philippine Islands and they had no guardian of their person and property."

4. At page 3, paragraph IV of the said amended complaint, all of that part which begins "and without the assistance of a guardian" ending "they had been emancipated minors."

5. At pages 4 and 5 the whole of paragraph V of said amended complaint.

6. At page 5 the whole of paragraph VI of said amended complaint.

101 7. At pages 5 and 6 the whole of paragraph VII of said amended complaint.

This motion shall be made in view of the amended complaint and of this notice, and is based on the ground that the portions above quoted of said amended complaint are irrelevant and redundant, and that said portions are not statements of fact but conclusions of law.

Respectfully submitted,

pp. (Signed)

HAUSSERMANN & COHN,
C. C. COHN,

Attorneys for the Defendant, The Hongkong & Shanghai Banking Corporation.

Received copy.
(Sgd.)

R. ZALDARRIAGA,
For Chicote & Miranda.

(Title of the Case Omitted.)

Now comes the defendant The Hongkong and Shanghai Banking Corporation and demurs to the amended complaint filed by plaintiffs in this case basing this demurrer on the following motives:

1. That said amended complaint does not state facts sufficient to

constitute a cause of action against the defendant The Hongkong & Shanghai Banking Corporation.

2. That said amended complaint is ambiguous, unintelligible and uncertain, in that: It is impossible to determine from the said
 102 amended complaint whether the cause of action which it pretends to allege is based in the lack of capacity of the plaintiffs to execute the contract which is sought to have declared null and void; or if the said amended complaint is based in the lack of validity of the consent given by said plaintiffs to said contract by reason of the fact that said consent was procured through fraud; or if said complaint is based in the lack of valid consideration for the execution of said contract.

Wherefore the above named defendant asks that plaintiffs take nothing by their suit and that the complaint be dismissed as to this defendant sentencing the plaintiffs to pay the costs of this action.

(Sgd.) HAUSSERMAN & COHN,
CHARLES C. COHN,
*Attorneys for the Defendant, the Hongkong &
Shanghai Banking Corporation.*

Received copy.

(Signed) R. ZALDARRIAGA,
For Chicote and Miranda.

Stamped: Filed on the 24 of November, 1908, at 9:45 a. m.

(Signed) J. McMICKING, *Clerk.*

(Title of the Case Omitted.)

The defendant Isabel Palet y Babarro widow of Aldecoa, answering the amended complaint, alleges:

103 That she reproduces all the statements contained in her answer to the original complaint, as if the same were made in this answer.

And she reiterates her petition to this Court that, in consideration of the facts alleged in said amended complaint, the petition made in the same be granted, without, however, finding this defendant liable.

Manila, December 7, 1908.

(Signed) MAXIMINO MINA,
Attorney for the Defendant Isabel Palet, Widow of Aldecoa.

Received copy this 7th day of December, 1908.

(Signed) CHICOTE AND MIRANDA.

(Signed) HAUSSERMANN AND COHN,
Attorneys for the Hongkong Bank.

(Signed) ROSADO, SANZ AND OPISSO,
Attorneys for Aldecoa and Company.

Stamped: Filed on the 7th of December, 1908, at 11:30 a. m.

(Signed) J. McMICKING, *Clerk.*

(Title of the Case Omitted.)

Order.

The defendant Hongkong & Shanghai Banking Corporation files a motion to strike out certain portions of the amended complaint, and it is conceded that this motion is substantially the same as that of March 23, 1908, which was applied to a previous com-
 104 plaint. That motion was, on March 31st, overruled by another judge of this court, on the ground that the matter sought to be eliminated was at least not prejudicial. We do not think we should make a different ruling now. Although a new complaint is filed the question is practically identical and the cause is the same. For different judges to make inconsistent rulings in the same case would lead to much confusion and the practice ought not to be indulged in without urgent reasons being shown, which have not been produced here. The motion is therefore overruled, but no ruling is made to the demurrer, which we do not understand to have been submitted, and if, as defendant claims, the matter sought to be eliminated consists in part of conclusions of law they are not admitted by the demurrer.

Manila, P. I., December 17, 1908.

By the Court.

(Signed)

CHARLES S. LOBINGIER, *Judge.*

This 18 of December, 1908, the parties were notified of the foregoing order.

(Signed)

JOSE CASIMIRO,

Deputy Clerk.

(Title of the Case Omitted.)

Now comes the defendant The Hongkong and Shanghai
 105 Banking Corporation through the undersigned attorneys, and excepts to the order of this date, December 17th, 1908, rendered in the above entitled case, denying the motion to strike out some portions of the amended complaint, and asks that this exception be duly registered in this Court.

Manila, P. I., December 19th, 1908.

p.p,

(Signed)

HAUSSERMANN AND COHN,
CHARLES C. COHN,*Attorneys for the Defendant, the Hongkong and
Shanghai Banking Corporation.*

Received copy this 19th of December, 1908.

ROSADO, SANZ AND OPISSO,

(Signed) By POT. VILL. BERNABE.

(Signed) CHICOTE AND MIRANDA,

Attorneys for Plaintiffs.

Stamped: Filed on the 19 of December, 1908, at 12:15 p. m.
(Signed) J. McMICKING, *Clerk*.

In the month of April, 1909, the demurrer of the defendant the Hongkong Bank, was submitted, and upon the arguments of the parties, the Court decided said demurrer as follows:

(Title of the Case Omitted.)

Order.

The defendant bank presents a demurrer to the second
106 amended complaint and the first and principal ground of
which demurrer is the same as in that formerly overruled by
another judge of this court when presented as to the first amended
complaint. The latter appears to differ from the present complaint
only in respect to a few brief and not especially important aver-
ments. Were we to sustain the demurrer, therefore, on this ground,
we would virtually be ruling in conflict with the decision upon the
previous demurrer by the same party and this is forbidden by well
settled rules of practice (See e. g. Marvin v. Weider, 31 Neb. 774,
48 N. W. Rep. 825). While, therefore, we might rule differently if
the question were before us originally we feel bound in order to
prevent confusion and conflict in the transaction of judicial busi-
ness to follow the rule already made and which has become the law
of the case.

As to the second ground of the present demurrer we do not think
it essential to determine upon which of several alleged grounds plain-
tiff seeks relief. When any sufficient ground is alleged the com-
plaint recites a cause of action even though the precise relief sought
may not be grantable. It is true that Code C. P. sec. 90 (2) requires
that "each distinct cause of action must be set forth in a separate
paragraph" but the non-observance of this rule is not made a ground
of demurrer under sec. 91 and may therefore be reached only by
motion.

The first ground of the demurrer having been heretofore
107 adjudicated and the second ground not being, in our judg-
ment, well taken, the demurrer is overruled and the defend-
ant bank is given the usual five days to answer.

By the Court:

(Signed)

CHARLES S. LOBINGIER, *Judge*.

Manila, P. I., April 26, 1909.

On this date, the parties have been notified of the above order.

(Signed)

JOSE CASIMIRO,

Deputy Clerk.

(Title of the case omitted.)

Now comes the defendant, the Hongkong and Shanghai Banking
Corporation through the undersigned attorneys, and excepts to the

order of this Court of April 26, 1909, in the above entitled case, overruling the demurrer filed by this defendant to the amended complaint, and asks that this exception be duly registered in this Court.
Manila, April 27, 1909.

p. p. (Signed) HAUSSERMANN AND COHN,
CHARLES C. COHN,
*Attorneys for the Defendant The Hongkong
and Shanghai Banking Corporation.*

Received copy this 27 of April, 1909.

(Signed) CHICOTE AND MIRANDA.

Stamped: Filed on the 28 of April, 1909, at 9 a. m.—(Signed)
J. McMicking.—Clerk.

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(Title of the case omitted.)

Now comes the defendant the Hongkong and Shanghai Banking Corporation and answering to plaintiffs' complaint, alleges:

That said defendant denies generally and specifically each and every one of the allegations contained in the above said complaint, and the whole of the same.

Therefore, the defendant Hongkong and Shanghai Banking Corporation asks this Court to dismiss the complaint with the costs against the plaintiffs.

p. p. (Signed) HAUSSERMANN AND COHN,
CHARLES C. COHN,
*Attorneys for the Defendant Hongkong &
Shanghai Banking Corporation.*

Received copy.
(Signed) ROSADO, SANZ AND OPISSO.

Received copy.
(Signed) CHICOTE AND MIRANDA.

Received copy.
(Signed) MAXIMINO MINA.

Stamped: Filed on the 3 of May, 1909, at 11:30 a. m.—
(Signed) J. McMicking.—Clerk.

(Title of the case omitted.)

Defendant Aldecoa & Company, in liquidation answering the complaint filed by plaintiffs in this case on November 17, 1908, state:

109 That they give the same answer as that which have been filed in this case on April 18, 1908, which answer they hereby reproduce as if it were fully contained herein.

Manila, August 7, 1909.

(Sgd.) ROSADO, SANZ & OPISSO,
Attorneys at Law, Plaza del P. Moraga, No. 20, Manila.

Received copy.

(Sgd.) CHICOTE AND MIRANDA.

Stamped: Filed on August 9, 1909 at 11:15 a. m.—(Sgd.) J. McMicking.—Clerk.

The trial of the case was set for hearing on the 21 of July, 1909, the proceedings taking place at such hearing as they appear from the notes taken by the official reporter of the Court of the First Instance of Manila, William M. Barrington, being as follows:

110 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part II.

Before Judge Crossfield.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET and ZOILO IBAÑEZ DE
ALDECOA Y PALET, Plaintiffs,
against

ALDECOA Y COMPAÑIA EN LIQUIDACION, ISABEL PALET GABARRO,
Widow of Ibañez de Aldecoa, and the Hongkong and Shanghai
Banking Corporation, Defendants.

Proceedings.

July 21st, 1909.

Sr. Alfredo Chicote appeared in behalf of the plaintiffs; Sr. Jose Ma. Rosado for the defendant Aldecoa y Compañia; Sr. Maximino Mina for the defendant Isabel Palet y Gabarro; and Mr. Charles C. Cohn for the defendant Hongkong and Shanghai Banking Corporation.

The Court: Upon calling the case it was made to appear that the plaintiff Joaquin Ibañez de Aldecoa has been declared
111 prodigal, and that a guardian has been appointed for him who should be substituted for him as plaintiff in this action: it is therefore ordered that Sr. Alfredo Chicote be substituted as one of the plaintiffs in this action, in his capacity as guardian of Joaquin Ibañez de Aldecoa.

Sr. Chicote: I offer in evidence the mortgage which is attached to the original complaint, and which is marked Exhibit "A."

Mr. Cohn: No objection.

Sr. Rosado: No objection.

The Court: It is admitted that the plaintiffs, Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet, are natural born citizens of the Philippine Islands.

Sr. Chicote: I now offer in evidence the deposition of Joaquin Ibañez de Aldecoa y Palet, taken at the instigation of the defendant Hongkong and Shanghai Banking Corporation, and ask that it be marked Exhibit "B."

Mr. Cohn: I object to the admission of this deposition on the ground that it is incompetent, and more specifically on the ground that it has not been properly executed or presented as a part of the record as required by the Code of Civil Procedure; and I
112 further object to it because a deposition cannot be introduced in evidence as an exhibit.

Sr. Rosado: I make the same objection.

The Court: It seems to be certified to by Judge Araullo.

Sr. Chicote: I offer in evidence a certificate from the Spanish Consulate in Manila to the effect that plaintiffs were not registered in the Registry of the Spanish Consulate, and ask that it be marked Exhibit "C."

Mr. Cohn: No objection.

Sr. Rosado: No objection.

Sr. Chicote: I now offer in evidence two documents of emancipation which appear in the second paragraph of the complaint, and ask that they be marked Exhibits D and E respectively.

Mr. Cohn: No objection.

Sr. Rosado: No objection.

Sr. Chicote: I now offer in evidence a power of attorney authorized by Doña Isabel Palet y Gabarro, and ask that it be marked Exhibit "F."

Mr. Cohn: No objection.

Sr. Rosado: No objection.

Sr. Chicote: I now offer in evidence the document of partnership which appears attached as Exhibit "A" in the record in Case No. 6088 of this Court, and offer a copy of same to be attached
113 to the record in this case as Exhibit G.

Mr. Cohn: I object to this offer on the ground that it is irrelevant and immaterial and as not tending to prove any material issue in this case.

Sr. Rosado: Same objection.

The Court: Objection overruled.

Mr. Cohn: Exception.

Sr. Rosado: Exception.

Sr. Chicote: I now offer in evidence a certified copy of the decision rendered in Case No. 6088 by Judge Lobingier, declaring that the plaintiffs were not and never had been partners of Aldecoa y Compañia, and ask that it be marked Exhibit H.

Mr. Cohn: Objected to on the same ground, and on the further ground that the judgment in said action No. 6088 is not binding or obligatory on the defendant Hongkong and Shanghai Banking Corporation.

The Court: Objection sustained.

Sr. Chicote: Exception, and I ask that this exhibit be attached to the record.

The Court: It may be attached.

Sr. Chicote: I now offer in evidence an order signed by the Clerk, dated September 7th, 1908, directed to the Mercantile Registry, notifying them of the judgment entered by the Court to the effect that

114 Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de de Aldecoa y Palet are not partners in the firm of Aldecoa y Compañía.

Mr. Cohn: Objected to on the same grounds, and as incompetent.

Sr. Rosado: Same objection.

The Court: Objection sustained.

Sr. Chicote: Exception.

Sr. Chicote: I now offer in evidence a copy of a letter addressed to the Manager of the Hongkong and Shanghai Banking Corporation by the Manager of Aldecoa y Compañía, dated August 24th, 1905, and ask that it be marked Exhibit I.

Mr. Cohn: No objection.

Sr. Rosado: No objection.

Sr. Chicote: I now offer in evidence a copy of a letter addressed to Doña Isabel Palet y Gabarro by Aldecoa y Compañía, dated October 18th, 1905, from Manila, and ask that it be marked Exhibit J.

Mr. Cohn: Objected to as incompetent in so far as the Hongkong and Shanghai Banking Corporation is concerned.

Sr. Rosado: I also object to it.

The Court: It may be received for the present, I will determine later whether it is competent, or not.

Sr. Chicote: I now offer in evidence a letter addressed by Mr. Jones, Manager of the Hongkong and Shanghai Banking Corporation, to Alejandro S. Macleod, as manager of the concern of Aldecoa y Compañía, dated January 15th, 1906, and ask that it be marked Exhibit K.

Mr. Cohn: No objection.

Sr. Rosado: No objection.

Sr. Chicote: The plaintiffs rest.

The Court: Proceed with the defense, if you have any.

Defense.

Mr. Cohn: It is admitted that the father of the plaintiffs died in the Philippine Islands prior to the year 1900.

Sr. Rosado: Same admission.

Mr. Cohn: It is admitted that the widow of the deceased Ibañez de Aldecoa continued to reside in Manila for some time after his death.

Sr. Rosado: Same admission.

Mr. Cohn: I now offer in evidence Exhibits "D and E," as part of the defense.

Sr. Rosado: Same offer.

Mr. Cohn: I also offer in evidence Exhibit "F," as part of the defense.

Sr. Rosado: Same offer.

Mr. Cohn: I will now offer in evidence a letter dated September 9th, 1904, addressed by Mr. Jones, manager of the Hongkong and Shanghai Banking Corporation, to Aldecoa y Compañía, and ask that it be marked Exhibit "D-1."

116 Sr. Chicote: No objection.

Mr. Cohn: I also offer in evidence a letter dated December 28th, 1904, from Mr. Jones manager of the Hongkong and Shanghai Banking Corporation, to Aldecoa y Compañia, and ask that it be marked Exhibit "D-2."

Sr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: I also offer in evidence a letter dated April 5th, 1905, between the same parties, and ask it be marked Exhibit "D-3."

Sr. Rosado: Same offer.

The Court: It may be received and will be so marked.

Sr. Chicote: No objection.

Mr. Cohn: I also offer in evidence a letter dated May 11th, 1905, between the same parties, and ask that it be marked Exhibit "D-4."

Sr. Rosado: Same offer.

Sr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: I also offer in evidence a copy of a letter written by the plaintiffs, Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet, to the Hongkong and Shanghai Banking Corporation, and ask that it be marked Exhibit "D-5."

117 Sr. Rosado: Same offer.

Sr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: I also offer in evidence a copy of a letter of the same date, addressed by Mr. Jones, manager of the Hongkong and Shanghai Banking Corporation, to Aldecoa y Compañia, and ask that it be marked Exhibit "D-6."

Sr. Rosado: Same offer.

Sr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: I also offer in evidence a letter dated June 8th, 1905, written by F. Zobel to the manager of the Hongkong and Shanghai Banking Corporation, and ask that it be marked Exhibit "D-7."

Sr. Rosado: Same offer.

Sr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: I also offer in evidence a letter dated June 22th, 1905, written by the manager of the Hongkong and Shanghai Banking Corporation to Aldecoa y Compañia, and ask that it be marked Exhibit "D-8."

Sr. Rosado: Same offer.

Mr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: I also offer in evidence a letter dated September 5th, 1905, from the manager of the Hongkong and Shanghai Banking Corporation, and ask that it be marked Exhibit "D-9."

118 Sr. Rosado: Same offer.

Sr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: I also offer in evidence a letter dated October 7th,

1905, from the manager of the Hongkong and Shanghai Banking Corporation to Aldecoa y Compañia, and ask that it be marked Exhibit "D-10."

Sr. Rosado: Same offer.

Sr. Chicote: No objection.

The Court: It may be received and will be so marked.

Mr. Cohn: The defendant Hongkong and Shanghai Banking Corporation rests, except in case the deposition is accepted in evidence, in which case I desire to offer some further evidence.

Sr. Rosado: I rest also under the same condition.

The Court: It is admitted that all the letters introduced by Mr. Cohn, were sent during the time Alejandro S. Macleod was managing partner of Aldecoa y Compañia.

Sr. Chicote: It is admitted that there were cases both civil and criminal instituted by Aldecoa y Compañia.

Mr. Cohn: Objected to as incompetent and immaterial.

The Court: It might be material, but I don't think it is competent.

119 Sr. Chicote: Nothing further.

The Court: It is admitted that H. D. C. Jones, then manager of the Hongkong and Shanghai Banking Corporation, is now absent from the Philippine Islands, and that all exhibits offered by the Hongkong and Shanghai Banking Corporation are also offered in behalf of Aldecoa y Compañia.

I certify that the above is a correct transcrip- of the proceedings in the above entitled case on July 21st, 1909.*

(S'g'd)

WM. M. BARRINGTON,

Official Reporter.

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6086, PLAINTIFFS' EXHIBIT "C."

Consulate General of Spain, Manila, P. I.

Number —.

I, Don Arturo Baldasano y Topete, Consul General of Spain for Manila, P. I., certify that Doña Isabel Palet, viuda de Aldecoa, Don Joaquin Ibañez de Aldecoa, and Don Zoilo Ibañez de Aldecoa, are not registered as Spanish subjects in the Registry of this Consulate general.

In witness whereof, and in order that this may be legally used wherever it may be necessary, and at the request of the interested parties, I issue these presents, in Manila, this eleventh day of January, nineteen hundred and eight.

By order:

(S'g'd)

The Vice-Consul, A. F. ARIAS.

EXHIBIT "D."

Emancipation.

In the City of Manila, Philippine Islands, this thirty first day of July, nineteen hundred and three, before me, Enrique Barrera
 121 y Caldes, Notary Public of the same, personally appeared
 Doña Isabel Palet y Gabarro, widow of the Don Zoilo Ibañez de Aldecoa y Aguirre, property holder, of lawful age, and resident of this City, without exhibiting any cedula on account — being exempt therefrom by reason of her sex:

And Don Joaquin Ibañez de Aldecoa y Palet, without any special profession, over eighteen years of age, single, and resident of this City, with cedula number one hundred sixty one thousand nine hundred and seventy eight, issued by the Collector of Internal Revenue of this City for the present year.

And having, as I believe they have, legal capacity to execute this instrument, Doña Isabel Palet y Gabarro, states:

That acknowledging in her son, Don Joaquin Ibañez de Aldecoa the faculty to rule his person and manage his property, renounces for herself the parental authority (*patria potestad*) which she heretofore had over his person and property, and by virtue hereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire, just as if he were of lawful age in accordance with the laws, without depending from
 122 or the intervention of the exponent, executing all kinds of documents either public or private, which may be necessary for the above named purposes.

Don Joaquin Ibañez de Aldecoa y Palet, on his turn states: That he accepts the emancipation granted him by his mother by virtue of the present document, being grateful to her for the benefit she thus confers on him.

In witness whereof, the above named parties ratify their statements before me, said parties being personally known to me, to be the persons above named, and swear that this is an act of their free will and deed, in the presence of the witnesses Don Candido del Rosario y Espiritu and Don Manuel Sansano y Arciaga, both clerks, of lawful age and residents of this City, who sign with them this document which I authorize as Notary Public under my signature and the seal of my office, on the day, month and year above mentioned: to all of which I certify.

(S'g'd)

ISABEL PALET, *Widow of Aldecoa.*

(S'g'd)

JOAQUIN IBAÑEZ DE ALDECOA.

(S'g'd)

CANDIDO DEL ROSARIO.

(S'g'd)

MANUEL SANSANO.

(S'g'd)

ENRIQUE BARRERA Y CALDES,

[NOTARIAL SEAL.]

Notary Public.

My commission expires January 1st, 1905.

The foregoing document has been registered by the entries
 123 and notations made at folios 200, 191, bis, 203, bis, 188, bis,
 of Volume 13 of Binondo Section, and 48 of Archive; prop-
 erty number 91, 92, 93, and 111 duplicate, inscriptions 7, 7, 7, and
 8, and 137 and 210, bis, of Volume 13, Books 2nd and 8th of Malate
 Section; properties No. 93 duplicate and 384, inscription 5, and nota-
 tion letter B. Manila, April 28, 1906.

[Seal of the Registry of the Property.]

(S'g'd)

CLAUDIO GABRIEL.

EXHIBIT "E."

Emancipation.

In the City of Manila, Philippine Islands, this thirty first day of
 July, nineteen hundred and three, before me, Enrique Barrera y
 Caldes, Notary Public of the same, personally appeared Doña Isa-
 bel Palet y Gabarro, widow of the Don Zoilo Ibañez de Aldecoa y
 Aguirre, property holder, of lawful age, and resident of this City,
 without exhibiting any cedula on account of being exempt therefrom
 by reason of her sex:

And Don Zoilo Ibañez de Aldecoa y Palet, without any special
 profession, over eighteen years of age, single, and resident of this
 City, with cedula number one hundred and seventy thousand
 124 nine hundred and twenty-one, issued by the Collector of In-
 ternal Revenue of this City for the present year.

And having, as I believe they have, legal capacity to execute this
 instrument, Doña Isabel Palet y Gabarro, states:

That acknowledging in her son, Don Zoilo Ibañez de Aldecoa the
 faculty to rule his person and manage his property, renounces for
 herself the parental authority (*patria potestad*) which she heretofore
 had over his person and property, and by virtue hereof she empowers
 him from now on to manage by himself the property belonging to
 him and that which in the future he might acquire, just as if he
 were of lawful age in accordance with the laws, without depending
 from or the intervention of the exponent, executing all kinds of
 documents either public or private, which may be necessary for the
 above named purposes.

Don Zoilo Ibañez de Aldecoa y Palet, on his turn states: That he
 accepts the emancipation granted him by his mother by virtue of
 the present document, being grateful to her for the benefit she thus
 confers on him

In witness whereof, the above named parties ratify their statements
 before me, said parties being personally known to me, to be the per-
 sons above named, and swear that this is an act of their free will and
 deed, in the presence of the witnesses Don Candido del Rosa-
 125 rio y Espiritu and Don Manuel Sansano y Arciaga, both
 clerks, of lawful age and residents of this City, who sign with
 them this document which I authorize as Notary Public under my

signature and the seal of my office, on the day, month and year above mentioned; to all of which I certify.

(S'g'd)	ISABEL PALET, <i>Widow of Aldecoa.</i>
(S'g'd)	JOAQUIN IBAÑEZ DE ALDECOA.
(S'g'd)	CANDIDO DEL ROSARIO.
(S'g'd)	MANUEL SANSANO.

(S'g'd)	ENRIQUE BARRERA Y CALDES,
[NOTARIAL SEAL.]	<i>Notary Public.</i>

My commission expires January 1st, 1905.

The foregoing document has been registered by the entries and notations made at folios 200, 191, bis, 203, bis, 188, bis, of Volume 13 of Binondo Section, and 48 of the Archive; property number- 91, 92, 93, and 111, duplicate, inscriptions 7, 7, 7, and 8, and 137 and 210, bis, of Volume 13. Books 2nd and 8th of Malate Section; properties No- 93 duplicate and 384, inscription 5, and notation letter B. Manila, April 28, 1906.

[Seal of the Registry of the Property.]

(S'g'd)	CLAUDIO GABRIEL.
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EXHIBIT "F."

Number Seven Hundred and Twenty-two.

In the Villa of Madrid, on the thirteenth day of December, nineteen hundred and five: before me, Don Jose Criado y Fernandez Pacheco, Notary of the Illustrious College of this Court, and resident of the same, appears:

Doña Isabel Palet y Gabarro widow of Ibañez de Aldecoa, of lawful age, widow, land holder and resident of this City, living at number two, Galdo Street, with personal cedula of the second class, number thirty seven thousand six hundred and sixty-two, issued on the fourteenth day of April last.

And having, in my judgment, the necessary legal capacity to execute this instrument, she states:

That she grants Don Fernando Zobel y Ayala, of age, married, merchant and resident of Manila, Philippine Islands power of Attorney.

For her and in her name, place and stead and representing her person right and actions as capitalist-partner of the firm of Aldecoa & Company domiciled in said City of Manila, to execute jointly with her sons Don Zoilo and Don Joaquin Ibañez de Aldecoa, who are also members of said firm, the necessary public instrument mortgaging in favor of the Hongkong and Shanghai Banking Corporation also of Manila P. I. all the real property which exponent
127 and her two sons own in the Philippine Islands to secure said Bank the reimbursement of what the firm of Aldecoa & Company is indebted to the same in consideration of the agreement

had with the said Bank to the effect that the same shall wait for the term of five years to collect its credit or to have same reduced to a satisfactory amount, and secure the payment of the whole, without said Bank having a right to demand within said term the sale or conversion into money of the mortgaged property in order to collect what is due to the same, confining itself only to receive annually the sum of —P-50,000 on account of said credit; to determine the amount of the credit, to which end he may proceed to the liquidation of the same or he may conform with the liquidations already made; to consent to the other conditions which may be deemed proper and to see that the said mortgage deed shall contain whatever other requisites and circumstances be necessary for its validity and efficacy; the exponent granting also in favor of her children Don Zoilo and Don Joaquin Ibañez de Aldecoa in case it is deemed necessary, the proper authority or permission to mortgage their own property by said instrument for said purpose.

The exponent being present together with the instrumental
 128 witnesses Don Jose Alvarez y Cruz and Don Jose Garcia Camarena, of lawful age and resident of this capital, and this power of attorney having been read by me to them after having advised them of their right to do it by themselves (of which right they made no use), the exponent gave her consent and signed jointly with the witnesses, and I, the Notary, hereby certify that I know the person executing this document and all the contents of this public instrument written on a single sheet.—(Sgd.) Isabel Palet Viuda de Aldecoa.—(Sgd.) Jose Alvarez y Cruz—(Sgd.) Jose Garcia Camarena.—(Sgd.) Jose Criado F. Pacheco.

I certify that the above is the first copy of its original, with which it agrees, and which under the number above stated is in my current *proto cole* of public instruments where an entry has been made thereof. I issue this copy at the request of the person who executed this instrument, in this sheet of the seventh class, series A No. 142, 147 and I seal and rubricate the same in Madrid on the day of its execution, Amended "donde" valid.

(Sgd.)

JOSE CRIADO F. PACHECO.

I, Maddin Summers, Vice Consul of the United States at Madrid, Spain, hereby certify that Jose Criado F. Pacheco, whose signature and rubric appear herein is a notary public of the City of
 129 Madrid whose signature is entitled to full faith and credit.

In witness whereof I have set my hand and seal of this office at Madrid, this 15th day of December, 1905.

[SEAL]

(Sgd.)

MADDIN SUMMERS,

U. S. Vice-Consul.

No. 559.

Fee \$2.00—14 Ptas.

The foregoing document has been registered by the entries and notations made at folios 200, 191, bis, 203, bis, 188, bis, of Volume 13 of Binondo Section, and 48 of the Archive; property number 91.

92, 93 and 111 duplicate, inscriptions 7, 7, 7, and 8 and 137 and 210, bis, of Volume 13, Books 2nd and 8th of Malate Section; properties Nos. 93 duplicate and 384, inscription 5, and notation letter B. Manila, April 28, 1906.

[Seal of the Registry of the Property.]

(Sgd.)

CLAUDIO GABRIEL.

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6086.

EXHIBIT "G".

The Government of the Philippine Islands, Executive Bureau,
Division of Archives, Manila.

There is a stamp which reads: Fca. Nl. de la Moneda y Timbre. Sello 10. o A. s 1896 y 97 25 C. de peso.—N. O. 659. 554—Folio Five Thousand seven hundred and nineteen—5,719. Articles of the general mercantile partnership (sociedad mercantil regular colectiva) under the firm name of Aldecoa and Company, executed by the Most Excellent lady Doña Isabel Palet y Gabarro in her own right and as mother with parental authority and as legal administratrix of the property of her minor and not emancipated child/dren, Don Joaquín, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet; Doña Josefa Tremoya y Palet, in her own right and as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children, Doña Isabel and Don Modesto Cortabitarte y Tremoya; and Messrs. Juan Ortiz Monasterio e Irisarri, Sixto Jesus Alvarez Perez Miguel Ossorio y Cembrano and Agustin Palet y Roca, the last named in his own right and as attorney in fact of Don Guillermo Gargollo y Diez de Tejada. Number nine hundred and twenty five. In 131 Manila, this thirty first day of December, one thousand eight hundred and ninety six. Before me, Don Enrique Barrera y Caldes, Doctor in Canonical and Civil Law, Notary Public of the Illustrious Notarial College of Manila, and resident of this City, personally appear: The Most Excellent lady Doña Isabel Palet y Gabarro, widow of the Most Excellent Don Zoilo Ibañez de Aldecoa y Aguirre, of lawful age, land-holder, and resident of this Capital, with personal cedula of the first class, number ont hundred sixty nine, issued by the Administracion de Hacienda Publica of this Province on the twentieth of January of the present year; making her appearance in her own right and also as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children, Don Joaquín, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet, born of lawful wedlock with her late husband the said Most Excellent Don Zoilo Ibañez de Aldecoa y Aguirre, who was a resident of this City, where he died on the fourth day of October of the year one thousand eight hundred and ninety five; Doña Josefa Tremoya y Palet, widow of Don Modesto Cortabitarte e Ibañez de Aldecoa, twenty two years of age, dedicated

to the labors proper of her sex, and resident of this City, with personal cedula of the sixth class, number six thousand six hundred and four, issued by the Administración de Hacienda Pública of this Province on the twentieth of January of the present year; making her appearance in her own right and also as mother with

parental authority and as legal administratrix of the property of her minor and not emancipated children, Doña

132 Isabel and Don Modesto Cortabitarte y Tremoya, born of lawful wedlock with her late husband the said Don Modesto Cortabitarte e Ibañez de Aldecoa, who was a resident of this capital where he died on the fifteenth day of October of the present year; Don Juan Ortiz Monasterio e Irisarri, merchant, of lawful age, married, and resident of this capital, with personal cedula of the first class number two hundred and seventy, issued by the Administración de Hacienda Pública of this Province on the fourth of March of the present year; Don Sixto Jesus Alvarez Perez, merchant, of lawful age, married and resident of this City with personal cedula of the fourth class number nine hundred and eighty, issued by the Administración de Hacienda Pública of this Province, on the eighteenth of January of the present year; Don Miguel Ossorio y Cembrano, merchant, of lawful age, married and resident of this City with personal cedula of the fourth class number seven hundred ninety four, issued by the administración de Hacienda Pública of this Province on the fifteenth of January of the present year; and Don Agustin Palet y Roca, merchant, of lawful age, married and resident of this City, with personal cedula of the first class number one hundred eighty, issued by the Administración de Hacienda Pública of this Province on the twentieth of January of the present year; making his appearance in his own right and as attorney in fact and legal representative of Don Guillermo

133 Gargollo y Diez de Tejada, as credited by the first copy of the letters of attorney issued in his favor and in favor of the late Don Modesto Cortabitarte y Aldecoa on the seventeenth of August of the present year before the Notary Public of the City of Ferrol Don Gumersindo Lopez Pardo, which copy he exhibits to me and being, literally copied, as follows: Number six hundred and twenty six—In the City of Ferrol this seventeenth day of August, one thousand eight hundred and ninety six,—Before me, Don Gumersindo Lopez Pardo, Attorney at Law, Member of the Notarial College and resident of said City, personally appears Don Guillermo Gargollo y Diez de Tejada, fifty four years old, merchant, and lately a resident of the City of Manila, with personal cedula of the fifth class, number three hundred ninety five, issued in that City on January twentieth, last; and being in my judgment legally capable to execute this power of attorney, states: That as a member and partner in the mercantile firm of Aldecoa & Company domiciled in the City of Manila, according to a public instrument ratified before the Notary Public of that Capital, Don Abraham Garcia y Garcia, on the eleventh day of March last, he grants special power of attorney in favor of Don Modesto Cortabitarte y Aldecoa

and, in case of absence or illness of this gentleman, in favor of Don Agustin Palet y Roca, both residents of the City of Manila, for them to represent him at the meetings of the partners of said firm Aldecoa & Company, give their sanction to the resolutions 134 of the same, in accordance with the articles of partnership, and approve, as he does hereby, the entrance of Messrs. Juan Ortiz Monasterio and Miguel Ossorio y Cembrano as partners in the said firm, signing to this effect the necessary documents, since he does hereby approve whatever said attorneys may do while making legitimate use of this power of attorney. This document has been executed before the witnesses Don Pedro Lopez Sardina and Don Juan Chacon Yanez, residents of this City who signed with him after having each one by himself read this document. To whatever appears herein and to the fact that I know the person executing this instrument I, the Notary, certify. (Signed) Guillermo Gargollo. (Signed) P. Lopez Sardina. (Signed) Juan Chacon. (Signed) Lic. Gumersindo Lopez Pardo. This is a first copy of the original instrument which, under the number of order given at the beginning of this document remains in my current protocole, written on a sheet of the twelfth class number 1,298,808. And at the instance of the party executing this document I issue this copy which I sign, leaving an entry of this fact; in Ferrol, on the same day of the execution hereof. There is a rubric—(Signed) Lic. Gumersindo Lopez Pardo. There is a notarial seal which reads: Notaría del Lic. Don Gumersindo Lopez Pardo, Ferrol. Authentication. The undersigned, Notary of the Illustrious College of Coruña, Notarial district of Ferrol, authenticates the foregoing sign, signature and rubric of the Notary Public of this City Don Gumersindo Lopez Pardo, in Ferrol, this 21st day of August, 135 1896. There is a sign: (Signed) Lic. Cándido Conde Fern.z—There is a rubric.—O. K. The Judge pro tem. of the Court of First Instance, Jose Caballero—There is a rubric—There is a seal which reads: Court of First Instance and of Instruction. El Ferrol—There is a cancelled stamp for authentications of the value of three pesetas"—The foregoing agrees literally with its original, to which I refer. And having, in my judgment the necessary legal capacity to execute this instrument, without anything to the contrary being known to me, all the persons appearing, in their own right, and the Most Excellent lady Doña Isabel Palet y Gabarro, also as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children Don Joaquín, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet; Doña Josefa Tremoya y Palet also as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children, Doña Isabel and Don Modesta Cortabitarte y Tremoya, and Don Augustin Palet y Roca as attorney in fact and legal representative of Don Guillermo Gargollo y Diez de Tejada by virtue of the power of attorney granted to him and which he declares not to be revoked suspended or limited in whole or in part, they all freely and expontaneously state:

First. That by virtue of an instrument number one hundred and

fifty seven, executed in this City on the eleventh day of March of the present year before the Notary Public Don Abraham Garcia
 136 y Garcia the first copy of which has been registered at sheet number one hundred and nineteen, entry number three, folio sixty one, volume four of the book of "Partnerships" of the Mercantile Registry of this City, the Most Excellent lady Doña Isabel Palet y Gabarro and Messrs. Juan Ortiz Monasterio, Augustin Palet, Sixto Jesus Alvarez Perez and Guillermo Gargollo y Diez de Tejada and the late Don Modesto Cortabitarte, formed a general mercantile partnership (sociedad mercantil regular colectiva), domiciled in this City, under the firm name of Aldecoa & Company, the duration of which firm was fixed for the term of four years, beginning from the first day of January of the present year one thousand eight hundred and ninety six, having made the legal effects of the said contract retroactive to that date; said partnership having taken charge of the assets and liabilities of the mercantile partnership which, under the same firm name had been doing business in this City up to December 31st of last year.

Second. That by another instrument, number three hundred and ninety nine, executed in this City before the same Notary, Don Abraham Garcia y Garcia, on the eleventh day of July of the present year, the first copy of which has been registered at sheet number one hundred and nineteen duplicate, folio twenty two, bis, volume five, of the Book of "Partnerships" of the Mercantile Registry of this City, the late Don Modesto de Cortabitarte e Ibañez de
 137 Aldecoa, as manager of the said firm of Aldecoa and Company.

Mr. Ortiz Monasterio and Don Miguel Ossorio y Cembrano, the former on behalf of said partnership and the other two in their own right, modified some of the clauses of the Articles of the said partnership admitting Mr. Ossorio y Cembrano and re-admitting Mr. Ortiz Monasterio as industrial partners under the terms and conditions contained in the said instrument.

Third. That it being convenient to the interest of the partners of the present firm of Aldecoa and Company to dissolve the partnership formed by them, by reason of having to modify good many of the terms and conditions of the contract of partnership, and also by reason of the increase in the number of partners, admitting new ones in the new firm which they have agreed to constitute, the Most Excellent lady Doña Isabel Palet y Gabarro, Don Juan Ortiz Monasterio e Irisarri, Don Sixto Jesus Alvarez Perez, Don Miguel Ossorio y Cembrano and Don Augustin Palet y Roca, all of them in their own right and the last named also as attorney in fact and legal representative of Don Guillermo Gargollo y Diez de Tejada, carrying said agreement into effect, by these presents most solemnly state.

Fourth. That on this date the partnership formed by them under the firm name of Aldecoa and Company by virtue of the said instruments executed on March eleventh and July eleventh of the present

year before the Notary Public Don Abraham Garcia y Garcia,
 138 is by these presents declared extinct and all of its assets and liabilities are to be taken charge of exclusively by the new

partnership which is to be formed by virtue of this instrument by and between the same parties and Doña Josefa Tremoya y Palet and her children and those of the Most Excellent lady Doña Isabel Palet.

Fifth. That by virtue of the foregoing statements, and it being the express desire of the above named parties to continue the business of the late firm of Aldecoa and Company, a desire which is equally expressed by the other lady appearing herein, Doña Josefa Tremoya y Palet both in regard to herself as well as in regard to her minor children, they have decided, by common agreement, on their own right and by their own free will, to form a new general mercantile partnership (*sociedad mercantil regular colectiva*) under the same firm name of "Aldecoa and Company," the object of which shall be to continue and develop the business of the old firm which was organized on the eleventh day of March of the present year and modified on the eleventh day of July last, dissolved hereby on this date; and in order to carry this agreement into effect, the Most Excellent lady Doña Isabel Palet y Gabarro, Doña Josefa Tremoya y Palet, and Messrs. Agustin Palet y Roca, by himself and as attorney in fact of Don Guillermo Gargollo, Juan Ortiz Monasterio e
139 Irisarri, Sixto Jesus Alvarez Perez and Miguel Ossorio y Cembrano, by these presents solemnly declare: That on their own behalf and on behalf of the persons by them represented they hereby constitute the said partnership, subject to the following terms and conditions.

First. The partnership which is by these presents organized shall be a general mercantile partnership (*sociedad mercantil regular colectiva*) which is to do business under the firm name of Aldecoa and Company, its domicile being for all legal effects this City of Manila.

Second. The said firm of Aldecoa and Company shall take charge of the assets and liabilities of the mercantile firm which has been engaged in business in this City until the thirty first of December, one thousand eight hundred and ninety six, and therefore the new firm is subrogated to all the rights and liabilities of the extinguished firm without restrictions or limitations of any kind.

Third. The only members which for the present compose this partnership are the following. Capitalists.—The Most Excellent lady Doña Isabel Palet y Gabarro, widow of Ibañez de Aldecoa.—Doña Josefa Tremoya y Palet, widow of Cortabitarte.—Don Agustin Palet y Roca.—Don Sixto Jesus Alvarez Perez.—Don Miguel Ossorio y Cembrano.—Doña Isabel Cortabitarte y Tremoya—and Don Modesto

Cortabitarte y Tremoya.—Industrial partners.—Don Juan
140 Ortiz Monasterio e Irisarri.—Don Sixto Jesus Alvarez Perez.—Don Miguel Ossorio y Cembrano.—Don Guillermo Gargollo y Diez de Tejada.—Don Joaquin Ibañez de Aldecoa y Palet.—Don Zoiilo Ibañez de Aldecoa y Palet.—and Doña Cecilia Ibañez de Aldecoa y Palet.

Fourth. The object of the partnership shall be to continue the business transactions of the former firm of Aldecoa and Company consisting of all kinds of commerce in general, both of importation and exportation, banking, exchange, commissions, advances in payment of expenses duly secured by merchandise in the hands of

the firm and consigned to the same, advances on the value of hemp consigned to the firm and deposited therewith or placed at its disposal in the provinces and whatever other transactions may be deemed useful in the opinion of the majority, except mining business which is absolutely forbidden to engage in or to interest the firm as well as any other kind of business related to mining or mining enterprises.—The partners shall take care that for no reason the amount of the balance of the old firm as a result of the hemp and steamship business or of any other business actually established, made on December 31st 1896, shall suffer any increase; and in case that, for the interest of the partnership it should be considered convenient to establish any new business or to modify any of that already established whether or not any greater amount of capital need be
 141 invested, it shall be necessary to submit it to the approval of the meeting of the partners wherein the majority is to decide what shall be done in each case.

Fifth. The duration of this partnership is fixed for the term of ten years, beginning on the first day of January one thousand eight hundred ninety seven, and ending on December thirty first, nineteen hundred and six. This term may be extended for as long a period and as many times as the capitalists may agree.—If, for any reason, the industrial partners Don Joaquin, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet should withdraw from the firm, this firm shall immediately enter into liquidation the duration of which shall be fixed by the majority of the members.

Sixth. The use of the firm name is given severally to Messrs. Juan Ortiz Monasterio, Sixto Jesus Alvarez Perez, Miguel Ossorio y Cembrana and Guillermo Gargollo y Diez de Tejada.

Seventh. The members having the use of the firm name are hereby appointed managers of the firm; but Mr. Ortiz Monasterio, by reason of the long time he has belonged to the firm, and on account of having already held this office, shall designate the branch of the business which each one of the others is to take charge of, as manager, without prejudice, in case of illness or absence, of one substituting another. If, in the absence of Mr. Ortiz Monasterio, it should be necessary to charge any of the appointments made by

him, said change shall be agreed upon by the majority,
 142 reporting this fact to Mr. Ortiz and asking his advice, and should it disagree with what has been resolved a new resolution can be taken by meeting.—In case that the appearance of one of the partners be necessary before any court, Board, authority, etc., and this duty is not included or foreseen in those already designated, the majority shall appoint the person who is to fulfill it.—By this procedure, the person designated as manager shall act at all times and in all cases as such manager, without limitation as to time, and always complying with the resolution of the majority according to each particular business; and the person designated as manager, clothed with all the authority and representation of the partnership, shall have power, on behalf of said partnership, to make all kinds of purchases, charges, sales, contracts, loans, transactions, business and mercantile speculations which may fall within

or be related to the purposes of this firm; to compromise any differences or questions which the partnership may have with third persons or entities; represent the partnership judicially or extra judicially; to transact all the business wherein the partnership may be interested; to appoint all kinds of general or special agents and solicitors for the claim or collection of credits, and to file before the Courts the complaints and exceptions which may be deemed convenient.—The partners which, as such, or as manager, should not

comply with the resolutions of the majority may be separated
143 from the partnership should a majority of the meeting of the partners so decide.

Eighth. The Capital of the firm shall be three hundred seventy-five thousand pesos contributed by the partners in the following proportion.—The Most Excellent lady Doña Isabel Palet y Gabarro, widow of Ibañez de Aldecoa two hundred thousand pesos.—Don Agustín Palet y Doca one hundred thousand pesos. Doña Josefa Tremoya v Palet, widow of Cortabitarte, twenty-five thousand pesos.—Doña Isabel de Cortabitarte y Tremoya twelve thousand five hundred pesos. Don Sixto Jesus Alvarez Perez twelve thousand five hundred pesos.—Don Modesto Cortabitarte v Tremoya twelve thousand five hundred pesos.—and Don Miguel Ossorio y Cembrano twelve thousand five hundred pesos.—Which amounts appear in the respective accounts of the capital on the first day of January, eighteen hundred and ninety seven, and in the inventory taken by common agreement, said amounts representing credits, values and other property, as set forth in said inventory.

Ninth. The profits or losses obtained shall be prorated as follows: Capitalists:—The Most excellent lay Doña Isabel y Gabarro, thirty two per cent.—Don Agustín Palet y Roca, sixteen per cent.—Doña Josefa Tremoya y Palet, four per cent.—Doña Isabel de Cortabitarte y Tremoya, two per cent.—Don Modesto de Cortabitarte y Tremoya, two per cent.—Don Sixto Jesus Alvarez Perez, two per cent.—
144 and Don Miguel Ossorio y Cembrano, two per cent.—Industrial partners.—Don Juan Ortiz Monasterio e Irisarri,

five per cent.—Don Sixto Jesus Alvarez Perez, eight per cent.—Don Guillermo Gargollo y Díez de Tejada, five per cent.—Don Joaquín, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet, five per cent.—For unforeseen cases eight per cent.—And the balance of one per cent for the purpose hereinafter to be stated.—If the allotment made for unforeseen cases as well as the balance of one per cent should find no application during the year, they shall be prorated on the thirty first of December of that year among the industrial partners only, in the same proportion as their respective shares as such industrial partners.—If it should happen that the allotment made for unforeseen cases should find application in a new industrial partner admitted into the partnership this shall not alter the proportion in which the others are to share, inasmuch as their share is already limited.—If the new industrial partner should desire at the same time to become a capitalist-partner, his share and participation as such shall be that which may correspond him on the amount of capital paid in by him in proportion to the total

amount of the capital of the partnership.—The admission of a new partner either as capitalist-partner or as industrial partner shall be subject to the vote of the majority, although, acknowledging the convenience of admitting one, the maximum interest which
 145 can be reserved to him as industrial partner is already estimated. His interest as capitalist-partner shall depend from the amount of capital he may bring.—The industrial partner shall bear the losses which the partnership might suffer by reason of bad business in the same proportion assigned to them, but only out of the reserve fund to be established as provided in clause twelfth; and if the loss suffered should exhaust said fund, the excess shall be borne exclusively by the capitalist-partner.

Tenth. None of the capitalist-partners shall draw any salary or shall be able to dispose of his capital in the partnership; this capital shall earn no interest of any kind; but he shall have a right, if the partnership should agree, to deposit therewith at the maximum interest of five per cent per annum, the capital or the economies of his respective wife and children, the partnership giving security for these deposits whenever it may be deemed convenient, with values or property of the same and in the manner prescribed by law, in order to establish the preference of the credits of this nature.—The heirs of the deceased, the Most Excellent Don Zoilo Ibañez de Aldecoa, shall be considered preferred creditors as if they had been acknowledged as such by public instrument.—The right to make the deposit to which this article refers is given in favor of both the capitalist-partners and the industrial partners.

Eleventh. The partners may withdraw every month for
 146 their personal expenses up to the following amounts.—The Most Excellent lady Doña Isabel Palet y Gabarro, eight hundred thirty three pesos and thirty three cents.—Don Agustin Palet y Roca, five hundred pesos.—Doña Josefa Tremoya y Palet, one hundred and twenty five pesos.—Doña Isabel de Cortabitarte y Tremoya, sixty two pesos and fifty cents.—Don Modesto Cortabitarte y Tremoya, sixty two pesos and fifty cents.—Don Sixto Jesus Alvarez Perez, six hundred forty five pesos and eighty three cents, of which, sixty two pesos and fifty cents is the amount which he can draw as capitalist-partner and five hundred eighty three pesos and thirty three cents as industrial partner.—Don Miguel Ossorio y Cembrano, six hundred forty five pesos and eighty three cents, of which, sixty two pesos and sixty cents is the amount which he can draw as capitalist-partner, and five hundred eighty three pesos and thirty three cents as industrial partner.—Don Guillermo Gargollo y Diez de Tejada, two hundred pesos.—and Don Juan Ortiz Monasterio, two hundred pesos.—The right hereby granted to the above named partners must be made use of by them gradually as it may be convenient and under the liability of the partners present.—If a new industrial partner should come to represent what has been allotted for unforeseen cases, he shall have a right to draw as salary or to apply to his personal expenses the monthly sum of five hundred and eighty three pesos and thirty three cents, in the
 147 same gradual form as above established. If, at the same time, he should come into the partnership as capitalist-

partner thereof,* he shall have a right to draw in advance on account of his share in the profits in the same manner and proportion as Messrs. Alvarez and Ossorio in their character as capitalist-partners.—The advances made to the capitalist-partners for their personal expenses are considered as an advance payment on account of the profits which may correspond them; and therefore if on any year there should be no profits, any moneys drawn by them must reduce capital in the amount so drawn.—The advances assigned to the industrial partners for their personal expenses which amount, in regard to Mr. Alvarez, to seven thousand pesos a year; in regard to Mr. Ossorio, seven thousand pesos a year; to Mr. Ortiz Monasterio, two thousand four hundred pesos a year; to Mr. Gargollo, two thousand four hundred pesos a year, and the seven thousand pesos allotted for unforeseen cases are a part of the profits for the industry, and this amounts shall, on any year where there may have been no profits, mean an inevitable expense for the partnership and the industrial partners shall not be obliged to refund what they may have drawn on this account, since the advance has been made to them to cover their indispensable living expenses, they being obliged, in exchange, to work for the partnership;

148 with the result therefore, that said amounts must always be balanced on the thirty first of December of each year by the account of general expenses.

Twelfth. If fifty per cent of the net profits belonging to each capitalist-partner should exceed the amount allotted to him for his yearly personal expenses, he shall be able to freely dispose of the difference.—The balance of fifty per cent shall form part of the account to be known as "reserve fund" which must be kept in order to meet any unforeseen losses which might occur.—The industrial partners shall, likewise, contribute with fifty per cent of the amount which may correspond them from the net profits to the building of said reserve fund, being at liberty to dispose of the remaining fifty per cent.

Thirteenth. The reserve fund shall be kept until the expiration of the social term, if all partners should reach that period; this account to be liquidated pro rata to each one in accordance with his share and in equal proportion to those of the others.—In case of death of any of the partners his share in the reserve fund shall be liquidated; being distributed between those who may have an interest in the same the amount so liquidated to be proportionally replaced in said reserve fund. No liquidation of the liability of any partner in the account of the reserve fund is to be made in case of sale by one partner of his share or interest in favor of another partner; if any such sale takes place, it must include, not only the interest

149 or share but also the part of the vendor's liability in the reserve fund. No other charges are to be made in this account than those originating from extraordinary and unforeseen losses and not those which arise from the active life of business.

Fourteenth. On making the balance, the resolution of the majority opinion of the partners shall fix the value which is to be given to the property and belongings of any kind of the partnership for

the next ensuing year, as well as the items which on account of insolvency, depreciation or any other reason deserve to be carried directly to the account of loss and profits for the ending year.—This is the manner in which the general balance is to be made on the thirty first day of December of each year and the capital of the firm appearing in the respective account shall be made up from the partial amounts contributed by each capitalist-partner, these figures to be considered as the exact ones in case of having to liquidate the share of any partner either by voluntary or obligatory separation or by death.

Fifteenth. No partner may engage in business outside of the partnership. They are however authorized to administrate their own private interests or those of another partner whom they may legally represent, whenever this administration, in the judgment of the majority, should not prejudice the business of the partnership.

Sixteenth. The method and manner of running the business of the partnership must be fixed by resolution adopted by the majority of the meeting of partners, which shall be entered in the Book
150 of Minutes which is to be kept for this purpose in compliance with the requisites of Articles thirty three and forty of the Code of Commerce in force.—In the month of January of each and every year and in view of the balance made on the thirty first of December, a meeting of partners shall be held to examine and pass upon the result obtained, to agree upon the changes which may be deemed convenient for the interest of the partnership, as well as to determine the manner in which the business is to be conducted in the future.—Besides, and whenever any partner should deem it convenient, a meeting shall be called to discuss the matters pertaining to said partnership, extending the proper minutes wherein the resolutions taken by the majority are to be consigned.—The majority in this case, as well as in any other, must be computed by the amount of the share of each partner in the profits of the business, as established in clause nine hereof.

Seventeenth. The absent partners may be represented at the meetings by other partners, through special power of attorney duly executed before a Notary Public.—The voting in any definite case, must be personal.—For any matters pertaining to the increase or reduction of the capital of the firm or value of the assets, all partners absent (if they are capitalist-partners) must be represented by proxy.—The minor children of the Most Excellent Don Zoilo Ibañez de Aldecoa y Aguirre who are members of this firm, as industrial partners, shall
151 not have the right to vote or to be heard at the meetings of the partnership.—No person can be considered as partner in this firm, or represent any partner in this firm, by reason of any relation of any kind with any of the members thereof, who is not himself a partner of the same. No other representation being admitted, not even a legal one, such as father, guardian, husband, etc.—It is the duty of every partner to leave an attorney-in-fact or representative in case of absence, and to this effect, the letters of attorney, as well as the wills must be deposited in due time in the safe

of the firm before the first day of March of the year one thousand eight hundred and ninety seven.

Eighteenth. Should any one of the partners wish to retire from the firm, he shall submit his motion in writing, and the majority shall adopt any resolution which it may deem convenient in regard thereto.—If the motion should be denied by the firm, any of the other members thereof may individually buy the share of the outgoing partner. In no case shall any other person who is not at present a member of the firm, be admitted into same, unless by unanimous consent of all the partners, except in the case provided for in clause nine hereof when the vote of the majority shall be sufficient.—The member Mr. Ortiz Monasterio, may retire from the firm whenever he may so desire by reason of health or his own convenience.

Nineteenth. All the expenses of the partnership, such as taxes, salaries, compensation to the employees, rent of warehouses, insurance and any other which may be necessary to attend properly to the needs of the firm, shall be on the account of the same.

Twentieth. Doña Isabel Palet y Gabarro and Doña Josefa Tremoya y Palet, and the minors Don Joaquin, Don Zoilo and Doña Cecilia Ibañez de Aldecoa, as well as Messrs. Palet, Ortiz, Monasterio, and Doña Isabel and Don Modesto Cortabitarte, are excused from attending to the office, and remain at liberty to reside wherever they please.—The other three partners, Messrs. Alvarez, Ossorio and Garguilo, as well as the industrial partner who may in the future be admitted into the partnership, are hereby bound to work for the firm, personally and actively, each one, however being granted one month vacation leave each year to take care of his health.—This vacation leave, which they shall enjoy alternately, shall be determined by the meeting, and the member on leave shall be substituted in his duties by another partner or by a clerk.—In case of illness, a member shall be substituted in the same manner, but if the illness should extend over a period of one month the compensation of the substitute shall be on his account, if so decided by the other partner. If the illness should extend for over a period of one year, the definite withdrawal of the industrial partner may be decided by the majority, even if the industrial partner be also a capitalist-partner.—After the business has been satisfactorily organized and its condition
153 be a prosperous one, and with a sufficient and competent clerical staff, alternate leaves of absence for one year can then be thought of.—This larger period shall make a trip to Europe possible, so convenient to health.—The turns for the annual vacation as well as for the trips to Europe shall be taken in the order in which the names of the industrial partners appear in the clause hereof regarding the share which each one of them is to have in the profits of the business. (Art. Ninth.)

Twenty-first. In case of death of any of the members of the firm, the deceased and his heirs shall cease from the date of the demise, to have any interest or liability in the firm, and the partnership shall continue between surviving members *members* for the rest of the

term of its duration and the extensions hereof as may be agreed upon, as if such demise had not occurred.—The liquidation of the profits and the losses which is to be made in the share of the deceased partner for the year in which his demise may have occurred, shall be made in accordance to the balance of December thirty first of that same year, estimating the proportion of the profits from the first of January of said year up to the date of the death.

Twenty-second. In the case of death of a capitalist-partner the amount of his share which the partnership will acknowledge shall be that which may appear to be on the first day of January of the year of his death, and the liquidation of his interest for the year of

his death shall be made in the manner already provided for
154 in the foregoing clause. The same procedure shall be observed for the industrial partners; after ascertaining definitely the amount of the capital to which the corresponding amount of the reserve fund is to be added, the payment to the heirs shall be made in the following manner:—If the deceased is a capitalist-partner, the amount of his share shall be divided by the ten years or the unexpired part of the same, and the result shall be the annual sum to be paid to the heirs, with the interest of five per cent per annum.—If the deceased is an industrial partner, the payment cannot be deferred over three years, and shall be made gradually and with interest. These obligations arising by reason of death of the members of the firm, must be acknowledged by public instrument and shall be considered preferential in order to offer greater securities to the interest of those who during their lives contributed so much to the prosperity of the partnership.

Twenty-third. The interest which the deceased partner may have in the partnership shall be distributed in the following manner: as capitalist-partner, between himself and the other surviving capitalist-partners, since the latter assume the liability of the former for the partnership's obligations; but the deceased or those surviving him shall not be released from liability of the deceased in the Reserve Fund, since, if this were not done, it would be necessary to estimate

the relation between the capital and the reserve fund of the
155 deceased, and distribute the amount proportional to the capital between the surviving partners, and that corresponding to the reserve fund between those persons contributing to such fund in proportion to the share of each one, eliminating the share of the deceased.—If the deceased, besides being a capitalist-partner, is also an industrial partner, his interest as such industrial partner shall be distributed between the other industrial partners in the proportion in which each one of the latter shall come to represent eliminating the interest of the deceased.—If the deceased is an industrial partner, his interest shall be distributed between the other industrial partners for the share which each one represents in the profits in the new proportion which by the demise will be established, excepting the three minors whose share in the profits shall be always the one already fixed, to wit, five per cent.

Twenty-fourth. It is hereby absolutely forbidden to sign promissory notes, public instruments, or any other similar document

unless it be in connection with the business and proper obligations of the partnership, with the exception of Messrs. Alvarez and Ossorio who are hereby authorized to raise the necessary funds in order to deposit the same as capital in this firm.—The partner who should violate this clause signing any promissory note or any other document, or signing any bond in the name of the firm, shall be immediately separated from the partnership and he shall be the

156 only person liable to the same for the signature, the security given or the liability assumed.

Twenty-fifth. The partners in making their wills shall adjust the provisions in the same to the strict compliance of the agreement contained in this instrument; it being hereby established as a basis therefor that it shall be forbidden to have intervention of the Courts in the testamentary proceedings, and that any disposition made whether by will or otherwise against the basis of this instrument shall be null and void.—All the partners shall deposit authenticated copies of their wills in the safe of the firm, one of the provisions of said wills to be that one or more of the members of this firm shall be the executor of the will to intervene as the representative of the deceased in whatever may refer to the liquidation of the assets in the partnership, and, if such provision is not made, the partnership shall appoint by majority of votes the partner who is to act as executor for the liquidation of his share, since the partnership in no manner shall consent any stranger to intervene in the business of the same.

Twenty-sixth. As soon as the partnership should have complied with all its obligations and if there is a balance in cash, the majority of votes of the partners may decide on a distribution of the same in proportion to the capital which each partner may have in the firm; this however shall not interrupt the course of business, since it must be also previously established by vote in what form shall the business continue as well as the annual amount which the partners

157 may gradually make use of to attend to their personal expenses, and whatever may be thought convenient to reform by reason of the small profit of the business and the diminution of the capital.

Twenty-seventh. All differences between the partners shall be settled by the meeting of the members and by the vote of the majority of those present. If the resolution is not satisfactory to the parties, the case shall be submitted to the decision of three merchants of foreign nationality, whose decision shall be considered final and inappealable.—The election of three arbiters shall be made by the common agreement of the parties in discord; and should they not come to such an agreement, the meeting of the partners shall make the choice by a majority vote. In no case shall there be an appeal from the decision of the arbiters to the Courts of Justice; and the party who, disregarding this caution should apply to the Courts, shall be immediately separated from the partnership and shall be fined in the sum of twenty five thousand pesos which shall be distributed on his account between the other members in proportion to the interest of each one in the firm, and shall, besides, be obliged to indemnify the firm for the expenses and damages

caused by his claim, complaint, or judicial action; to this end, his share in the capital of the firm shall be retained until the final decision is rendered, since said share shall be liable for the expenses and damages caused to the partnership.—And twenty-eighth: Any

158 infamous, criminal or political prosecution: the practice of vices condemned by morals or by the most exquisite breeding, or the infraction of any of the clauses of this contract of partnership, in all or in part, shall be sufficient reason for expulsion, which shall be decided by the vote of the majority; in this case, it shall be necessary that the absent partners be represented at the meeting.—Under the foregoing pacts and stipulations the firm of Aldecoa and Company is hereby constituted; which pacts they all promise and bind themselves to keep and comply with, the Most Excellent lady Doña Isabel Palet y Gabarro and Doña Josefa Tremoya y Palet and Don Agustin Palet y Roca, doing so not only in their own name and behalf but also on behalf of the persons by them represented, as to each and every part thereof.—The parties to this instrument are hereby advised by me, the Notary, that a copy hereof must be filed in the Mercantile Registry of this City, for its Registration, without which requisite it shall not affect third parties, according to the provisions of the Code of Commerce in force, of which advice they all have stated to have taken due notice.—So it is stated and executed in the presence of the instrumental witnesses, Don Tomas Aguilon and Don Zacarias San Pedro, both of age, and residents of this City; and this instrument having been read by all parties present by virtue of the right which

159 they have under the law, said parties ratify themselves and they all sign, approving the superscripts: c. v. viges, and the interliner ser. To all of which, as well as to the fact that I personally know the parties, their profession and residence, I, the Notary, hereby certify.—(Signed): Isabel Palet viuda de Aldecoa.—rubricated.—Josefa Tremoya viuda de Cortabitarte.—rubricated.—S. Jesus Alvarez Perez.—rubricated.—J. Ortiz.—rubricated.—Miguel Osserio.—rubricated.—A. Palet.—rubricated.—Tomas Aguilon.—rubricated.—Zacarias San Pedro.—rubricated.—(Signed): Dr. Enrique Barrera y Caldes.—rubricated. On the margin.—On the same date, December thirty first, eighteen hundred and ninety six, I have issued the first copy of this document at the instance of the parties executing the same, written on a sealed sheet of the first class and fourteen of the tenth class for the present term of two years. To all of which I certify.—Barrera. Rubricated.

I certify that the foregoing copy is a literal copy of the original which is kept in this office, which I sign and seal in Manila this twentieth day of January, nineteen hundred and eight.—Interlined: en,—valid.

(Signed)

M. DE IRIARTE,

Chief Division of Archives, Ex-Officio Notary Public.

There is an Internal Revenue Stamp.

160

6086.

DEFENDANT'S EXHIBIT "H."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

Civil No. 6088.

JOAQUIN IBANEZ DE ALDECOA et al., Plaintiffs,
 vs.

ALDECOA AND COMPANY in Liquidation, et al., Defendants.

Partial Nullity of the Partnership Contract of Aldecoa and Company.

Decision.

This case has been brought for decision on the face of the pleadings and in a stipulation on the facts agreed upon by the parties.

The action brought by the complaint is an action for the nullity of certain contracts and other acts subsequent to it. Plaintiffs claim to be excluded from a certain general mercantile partnership (*sociedad mercantil regular colectiva*) called "Aldecoa and Company" of this City in which they were included as industrial partners and actually appear as such at the present time in the articles of partnership and they ask that said articles of partnership and

161 any other contract which in consideration and in consequence of the inclusion of the plaintiffs in said contract of partnership should have been executed, be, in whatever they may affect them or their rights and interests, declared null and void and without any effect.

The above named firm of Aldecoa and Company and those persons who lately appeared as partners in the same, have been made parties defendant; but, from the stipulation of facts, there appears that defendants Alexander S. Macleod, Cecilio Tremoya and, it seems, also Josefa Tremoya, had already withdrawn from the firm and were no longer members thereof at the time this suit was brought.

The facts on which plaintiff's action is based and which are taken as proved at the trial, are the following:

1st. That on December 31st., 1896, defendant Isabel Palet y Gabarro, being the widow of Don Zoiilo Ibanez de Aldecoa, and mother of the plaintiffs herein, Joaquin, Zoiilo and Cecilia, surnamed Ibanez de Aldecoa, acting in her own interest and pretending to have power to contract in the name and on behalf of her three above named legitimate children, who were then minors and were not emancipated, Joaquin being 12 years, Zoiilo 11 years and Cecilia, 9 years old, executed and signed in her own name, as well as in the

name of her three named children, a contract of general partnership. (sociedad mercantil regular colectiva) ratified before the Notary Public of the City of Manila Don Enrique Barrera, by virtue of which the firm of Aldecoa and Company was organized, she
162 being included in said partnership as one of the largest shareholders thereof, and her three children, plaintiffs herein, as industrial partners, with a right to share in common with five percent on the net profits of the partnership's business, but without being obliged to lend their services to or to work for said partnership, being, furthermore, authorized to live wherever they chose.

2nd. That plaintiffs were then, as they are still now, owners of a large amount of real and personal property situated in the Philippine Islands, residing in the City of Manila under the guardianship and parental authority of their mother, Da. Isabel Palet y Gabarro widow of Aldecoa, and in the execution and ratification of said contract of partnership they were made parties thereof without any other formality than the express statement of the will of their mother, in accordance with that of the other contracting parties, to make them "industrial" partners, and to execute in their name and on their behalf the said contract of partnership of Aldecoa and Company.

3rd. That after the execution of this contract, there were others executed, modifying it inasmuch as their object was to include new members or to exclude some of those who were original partners in said firm, the mother of plaintiffs being a party to said contracts, not only on her own right as capitalist and general partner of said firm, but also in the name and on behalf of plaintiffs who were made to appear as industrial partners thereof, said plaintiffs being
163 minors and subject to the parental authority of their mother.

4th. That plaintiffs Zoilo and Cecilia, were, at the time the complaint in this case was filed, still minors, being represented and defended by a guardian ad litem appointed by this Court at their request, and plaintiff Joaquin was at that time 23 years old, having reached that age only in the month of March, 1907.

The questions presented by plaintiff's counsel and submitted to the decision of this Court are the following:

1st. Granting that the contract of partnership above referred to should not be afflicted with any defect rendering it null and void in regard to these plaintiff, would said plaintiffs, according to the terms and conditions of said contract, be considered members of Aldecoa & Company?

2nd. *It* said contract valid and of any force in what it may affect or in regard to these plaintiffs?

A contract of partnership is one by which two or more persons obligate themselves to place in a common fund any money, property, industry or any of these things, in order to obtain some profit. (Code of Commerce, Sec. 166; Civil Code, Sec. 1665.) From this, it follows that a person cannot be considered a partner in any civil or mercantile partnership if he has not contributed or bound himself to contribute with any money, property, industry or any of these

things in order to obtain some profit. The writer on Civil Law, Mr. Goyena, commenting this matter says:

"* * * it is necessary that each partner shall place something in common, be it money or any other thing, even his industry; the share in the profits, without this requisite, shall be a donation, not a partnership."

164 In the present case, plaintiffs did not contribute or bind themselves to contribute with any money, property, industry or any equivalent thereof into the partnership of Aldecoa and Company, but they were reserved a share in the net profits of the partnership's business. This condition does not and cannot give them the legal status of partners, even if their names had been included in the contract of partnership and they were given the character of industrial partners. Between them and the other contracting parties there never existed, or does now exist any legal relation of partnership, and their names and personality should not, therefore, appear in the articles of partnership, and must be excluded from the same. It would be, by all means, anomalous to maintain it, when it cannot produce any effect whatever in regard to these plaintiffs. No contract can exist without the consent of the contracting parties, a definite object which may be the subject of the contract and the cause for the obligation which may be established. (Civil Code, Art. 1261.) In contracts involving a valuable consideration the prestation or promise of a thing or service by the other party is understood as a consideration for each contracting party (Ibid. Art. 1274). Contracts without consideration or with an illicit one, have no effect whatsoever. (Ibid. Art. 1275.) In the contract of partnership it is quite clear that the consideration for the obligation of each partner is the contribution by the other partners with their property or industry to a common fund in order to obtain some profit. In

165 the present case plaintiffs did not contribute or bind themselves to contribute with anything whatever, either property or industry; therefore, the contract made with them lacks consideration, and it is in itself, as regards them, null and void and without effect.

On the other hand, a general mercantile partnership (*sociedad regular mercantil colectiva*) is a contract in the execution of which and for the attainment of its ends, each one of the partners practically engages in trade. For the legal exercise of commerce certain conditions as to capacity are required, which mercantile law does not recognize in those who are under 21 years of age. (Code of Commerce, Art. 4) except when it is to continue the commerce which their parents or the person from whom the right is derived may have been engaged in, in which case they can then engage in it through a guardian. (Code of Commerce, Art. 5.) The present case was not the continuation of a business previously established by plaintiffs' predecessors, but the creation of a commercial venture in which it does not appear that there was any property involved, belonging to these plaintiffs as a share in the inheritance of their father Don Zoilo Ibañez de Aldecoa and which had before been devoted to the commercial transactions in which the partnership was to be engaged.

At the time the contract of partnership of Aldecoa and Company was executed, plaintiffs were under 21 years of age and, therefore, they lacked legal capacity to engage in trade and to enter into mercantile contracts, either by themselves or by their guardians, and such mercantile contract, executed on their behalf by their mother

166 Doña Isabel Palet, is afflicted with the vital defect of lack of consent, which necessarily must produce the inefficacy and nullity of the contract in regard to the plaintiffs (Civil Code, Arts. 1278, 1261, 1263) just as if said contract had never existed for or been executed by these plaintiffs at any time.

The same conclusion would be reached if we should consider the question under the hypothesis that a person under 21 years of age could, through a guardian, engage in trade or form a partnership with others to engage in trade or for a definite mercantile transaction under the form of a general mercantile partnership, continuing the business in which their predecessors had been engaged. Art. 5 of the Code of Commerce does not establish the manner in which its provisions may be carried into effect; but article 50 of the same Code provides that whatever is not expressly established in said Code or in special laws, in regard to the requisites, modification, exceptions, interpretation, extinction and to the capacity of the contracting parties, mercantile contracts must be governed by the general rules of the common law; and in the Explanation of Motives for the Reformation of the Code of Commerce it was stated with reference to Art. 5th, that: * * * "notwithstanding, the previous proper declaration of the profits the minor or incapacitated person may derive by reason of continuing said commerce must be made, which shall be issued by the judicial authority, after the proceedings mentioned in the law of Civil Procedure." The exercise of Commerce necessarily involves the disposal or encumbering of property or the exposing of it to the risk of the results of mercantile transactions, and creates obligations which are beyond the character of those which fall strictly under the provisions of the Civil Law. In a mercantile partnership, the

167 contributions of the partners are in fact transferred in favor of the partnership, and when such partnership is a general one (*sociedad colectiva*) all the rest of the private property of the partners is liable for the result of the mercantile transactions of the partnership. In all cases of transfer or encumbrance of contracts affecting property belonging to them or which are subject to registration, the Civil Code requires that the necessity or utility of said act or contract which it is desired to execute be first shown and the necessary authorization given therefor. (Civil Code, Arts. 164, 269, numbers 4 and 5, and 270 and old law of Civil Procedure Art. 11970). The act and the contract executed by the defendant Isabel Palet on behalf of the plaintiffs has not filled all these requisites, and therefore it may and must be declared null and void.

On the other hand, it is a fact that defendant Doña Isabel Palet was an interested party in that contract and that, furthermore, there was a conflict between her and her children's interests. The first circumstance determines the legal incompatibility between the mother and her children to contract between themselves and this circum-

stance, together with the other, determine, in consequence, the lack of capacity in these plaintiffs to execute that contract. At the time of the execution of the contract, Isabel Palet was invested with the right of parental authority and, therefore, legally represented her children in all civil acts: but in the present case the representation of plaintiffs should have been given to a special guardian appointed for that purpose, on account of there being a conflict of interest between the mother and her children in the contract (Civil Code, Art. 165), the mother lacking authority to represent them in this case.

Parental authority is, besides, in its practical aspect, a legal mandate the purpose of which is to supply the lack of civil or juridical capacity, by creating a civil or juridical capacity and transforming the real absence of an incapacitated person into his juridical presence. A mandate cannot be made use of to contract with the same person of the principal, on account of the legal unity of the person, which makes it legally impossible for any contract to exist, since it is required that there be a meeting of two minds, free and judicially capable: "no one can contract with himself."

"They are incapable to contract with one another by reason of the civil relation existing between the contracting parties * * * the son who is under the parental authority of his father or his mother, with any of these, on account of there being unity of persons, except in some cases in which, by reason of incompatibility of interest between parents and children and by necessity, a contract may be executed through the intervention of a third party acting as guardian or representative of the minors, according to the provisions of the law. * * *" (Sanchez Roman, *Studies in Civil Law*, Vol. 4 page 181.)

Plaintiffs were not then legally and properly represented in the execution of the contract of partnership of Aldecoa and Company and of the other contracts modifying it, and such contracts, in regard to them, have no legal effect.

Wherefore, The Court finds, adjudges and decrees that the contract of general mercantile partnership (sociedad mercantil regular colectiva) executed by Doña Isabel Palet y Gabarro widow of Aldecoa on December 31st 1898, by virtue of a public instrument ratified before the Notary Public of Manila, Don Enrique Barrera y Aldecoa, in her own right, and in the name and on behalf of her children, plaintiffs Joaquin, Zoilo and Cecelia Ibañez de Aldecoa, and all other contracts executed thereafter in consequence of or modifying that contract, be and are hereby declared null and void and without any legal effect; in regard to these plaintiffs, that said plaintiffs are not, and have at no time been partners in the firm of Aldecoa and Company; and that said plaintiffs are and remain hereby excluded from said firm of Aldecoa and Company as members of or interested parties in said firm.

Let notice of this decision be given to the Mercantile Registry for the due registration thereof.

No express decision as to costs is given.

So ordered, adjudged and decreed.
Manila, P. I. 5 — of September, 1908.

(S'g'd)

CHARLES S. LOBINGIER,
Judge.

170

MANILA P. I., September 7, 1908.

To the Mercantile Registry, Manila.

SIR: I have the honor to notify you that on September 5th 1908, the decision in case No. 6088 entitled Joaquin Ibañez de Aldecoa at al. vs. Aldecoa and Company at al has been rendered as follows:

Wherefore, the Court finds adjudges and decrees that the contract of general mercantile partnership (*sociedad mercantil regular colectiva*) executed by Doña Isabel Palet y Gabarro widow of Aldecoa on December 31st 1898, by virtue of a public instrument ratified before the Notary Public of Manila, Don Enrique Barrera y Aldecoa, in her own right, and in the name and on behalf of her children, plaintiffs Joaquin, Zoilo and Cecilia Ibañez de Aldecoa, and all other contracts executed thereafter in consequence of or modifying that contract, be and are hereby declared null and void and without any legal effect; in regard to these plaintiffs, that said plaintiffs are not, and have at no time been partners in the firm of Aldecoa and Company; and that said plaintiffs are and remain hereby excluded from said firm of Aldecoa and Company as members of or interested parties in said firm.—Let notice of this decision be given to the Mercantile Registry for the due registration thereof.—No express decision as to costs is given.—So ordered, adjudged and decreed. Manila, P. I., 5 of September, 1908.

(Signed)

CHARLES S. LOBINGIER, *Judge.*

171 Notice thereof is hereby given to you for your knowledge and legal effects.

(Signed)

JOSE CASIMIRO,
Deputy Clerk.

6086.

EXHIBIT "I." (Eye.)

MANILA, August 24, 1905.

The manager of the Hongkong and Shanghai Banking Corporation, *Manila Manila.*

DEAR SIR: We hereby present to your consideration the question of this firm with that bank at the present moment, hoping that you will study the same: this question can be considered on two points as follows:

(a). The first point refers to the reduction of our credit in account current with that bank which on March of this year and on the preceeding month reached the amount of P500,000— which

amount you tried to have reduced by July 1st, last, to P500,000—and on December 31st of the present year to P450,000 and P50,000 every succeeding year until reducing it finally to P250,000—with which credit the firm could continue to do business without any further reduction. These conditions were modified in your presence by the inspector of the main house in Hongkong and which, with his consent, are as follows:

172 For the 31 of December 1905, our credit in that bank should not exceed P500,000
and in the succeeding years the credit should be reduced each year P50,000 as follows:

Our credit should not exceed:

On December 1906	P450,000
On December 31, 1907	P400,000
On December 31, 1908	" 350,000
On December 31, 1909	" 300,000
On December 31, 1910	" 250,000

with which amount the firm could continue doing business without reducing its credit in that bank.

As you can see we have complied with our part of the contract, in advance, for the 31st of December of this year, inasmuch as our debt to-day amounts only to P472,622.33 and we hope not to go beyond P500,000 (five hundred thousand pesos) as we agreed, thus complying with our contract.

The second point is that which has reference to the private security of Doña Isabel Palet viuda de Aldecoa and children, which that bank desires. We have given all our attention to this matter and we are sorry to inform you that we have not obtained an affirmative answer in regard to the giving of such security to that bank in spite of our great efforts to obtain same; we frankly inform you as to the real status of this matter.

Notwithstanding, we want to call your attention that said guaranties, although they should not be given directly to the bank of your charge, yet, they are liable to the same, inasmuch as they belong to the partners of the firm.

173 In view of the above we hope that you will take it in consideration and continue to trust this firm in the manner in which that bank has been doing it for a long time, assuring you that we shall *may* the greatest efforts towards, not only complying with the condition and terms for the reduction of our credit, but, if possible, to exceed the minimum of reduction of our credit in that bank.

We are, dear sir, respectfully yours,

ALDECOA & COMPANY.
By MACLEOD.

6086.

EXHIBIT "J."

MANILA, October 18, 1905.

Mrs. Isabel Palet, widow of Aldecoa, Madrid.

DEAR MADAM: We regret hereby to inform you as to the condition in which the matter of the Hongkong and Shanghai Banking Corporation with this firm is at the present time, it being necessary and indispensable to take a definite resolution on account of the urgency of the case, since if we do not take a prompt resolution, you as well as this firm and the rest of the partners, would have
174 to suffer fatal consequences.

Our good friend and relative, Don Fernando Zobel has been advising you often and in detail about this matter and its different aspects and for that reason we have not done so, since, doubtless, he, with more details and means of persuasion than we can have, has written you; but so far, up to the present, we have not been fortunate enough to find an echo in you to bring this matter to a settlement.

We enclose herewith a duplicate copy of the letter of said Bank under the seal of the same, in English, dated the 7th. of this month, together with its translation in Spanish, and by reading it, you will see that the proposition which that gentleman sent to Hongkong (of which Mr. Zobel has told us he has advised you), has been rejected, and on the other hand said bank demands the payment of the total amount of the debt on or before December 31st, 1905, that is to say, of this year, but in order to avoid any injury to the firm it would be ready to leave the debt standing, provided it were duly secured with the mortgage of the private property of the partners in the Philippines, and up to the necessary amount to cover the security for the value of the loan or credit of the bank. We beg to call your attention to the fact that the bank demands in the
first place the full payment of the total amount owed by this firm
and only in the second place it would accept the mortgage of
175 the property to the bank so as to let the firm continue its
business without demanding in that case the total payment
of the debt for the last day of this year.

We also enclose herewith the original letter and its translation into Spanish (which we received three days ago) written by Messrs. Coudert Bros. attorneys for the Bank on the 9th of the present month, by which you will see that they act under orders received, and as formal confirmation of that which was addressed to us by Mr. Jones on the 7th of the present month, in which letter said attorneys tell us that the firm must pay the full amount of its debt up to December 31st of the present year, or else secure that debt in the manner stated by the Hongkong Bank and to the satisfaction of said bank. We have spoken with the manager of the Hongkong Bank as to the manner and conditions in which the

liquidation of the firm could be made in case that the partners thereof should choose to go into liquidation and he answered us that the liquidation would be slow and without intervention from the bank, provided, of course, that the bank should be secured with the private property of the partners in the manner already stated, since, if this is not done, the liquidation would be made through the Courts and both the attorneys of the bank as well as the intervenor would intervene and the liquidation would proceed under one or several receivers.

Inasmuch as, whether the firm continues doing business
176 freely or goes into liquidation without the intervention of the bank, the partners of the firm must offer their private property in the Philippines as security, we believe that this condition must be accepted in order to avoid the great prejudice which would be caused by a judicial liquidation which would bring greater losses than liquidating slowly without the intervention of the Bank.

As you will see from the letter of the Director of the Bank of the 7th of this month should the firm continue (giving, of course, the above named security, the bank could not foreclose the mortgages for a period of five years, unless the firm should go into liquidation and then only as a last resort. There would also be left the obligation to pay the yearly sum of P50,000 in order to reduce the amount of the debt. For your knowledge we must tell you that on closing up our Cash Book to-day the balance we owe to the bank amounts to P423,813.29, and from the month of July our debt has not exceeded P500,000 which was the maximum amount fixed for the 31st of December of this year, since the limit of P450,000 has been fixed for December 31st, 1906, so that we can tell you now off hand we are within the terms of our obligation for the year 1905; and although at this moment the balance is in fact too small, due to a considerably large deposit made in said Bank,
and it must come up to a larger sum, yet we shall do all in
177 our power to keep within the limit of P500,000 thus complying with our side of the agreement.

We beg you to consider that within the term of five years which the bank gives us (should the security be given) there is plenty of time to reduce the balance within that term and, perhaps, to have the total amount of our debt fully paid, to which end we shall devote all our energies.

We also advise you of the fact that we are doing all in our power to have our consignors from the provinces reduce their debts and we are succeeding gradually, and as a proof of it, there is the reduction of our debt to the bank which, having reached at the middle of this year the amount of P550,000—and at one time P560,000—we do not exceed now by far the sum of P500,000.

In consequence of all we have said, we believe that your coming to this country is necessary, and the sooner the better, accompanied, at all events, by some person who may sustain your ideas and keep you advised in order to discuss the matter here and adopt the resolution which you may deem most convenient to your interest as well as to the interest of this firm; should you not be able to come

personally to this country accompanied by a person of your confidence, we believe that you must send that person immediately with full power of attorney, since it would be regrettable that
 178 disaster should befall us for not coming on time and that you should repent later for not having done so. We understand that we must discuss immediately what resolution are we to adopt in this matter, having in mind, of course, the good name of this firm, its interests and the interest of all its members, and we are of the opinion that the matter must be discussed here, with all the data and information in sight, since the mere interchange of correspondence at this moment we consider it suicide, inasmuch as the Bank gives us a very short term, which we might try to have it extended by reason of the call we make on you to come or to send a person of your confidence with full power. It would, really, be a pity that in the end they should take possession of the property which it is now refused to give as security.

Expecting your prompt resolution and asking you to send us a telegram advising us whether you are coming personally or sending us a person of your confidence, we beg to remain.

Yours very sincerely,

ALDECOA & COMPANY,
 By MACLEOD.

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6086.

EXHIBIT "K."

Hongkong & Shanghai Bank, Manila.

15/1, 1906.

DEAR MACLEOD: Will you please let me have a list of fincas and shares to be hypothecated to us as for our negotiation last year. I will get Cohn to push on with the papers so as to have everything in readiness for signature.

I understand that the share of the youngest girl cannot be included in this Aldecoa guarantee so that her proportion of the property must be deducted from the security given.

Please give this letter your immediate attention.

Very truly yours,
 (Sgd.)

H. D. C. JONES.

180

6086.

EXHIBIT "D-1."

Hongkong and Shanghai Banking Corporation.

MANILA, 9th September, 1904.

Messrs. Aldecoa & Co., Present.

DEAR SIR: I notice that you have drawn on your account today nearly P25,000. I shall be much obliged if you will always notify

me in anticipation when you are thinking of drawing cheques for a considerable amount.

I think it is quite understood between us that the Bank does not wish your a/c to exceed P500,000 pending arrangements for further reduction of same now being made in Spain, and I must ask you to make the necessary arrangements, both in Manila & Provinces, under which this figure will not be exceeded, otherwise I regret to say that cheques for an amount so much above the P500,000 will not be honored.

Last month I allowed the overdraft to run over this amount on the understanding that same would be reduced by proceeds of hemp, but naturally if funds are drawn out so freely in anticipation of such deposits, the account instead of being decreased is increased, and this I have strict instructions from our Head Office to prevent under all circumstances.

181 Please give this matter your earnest attention as it is of serious importance.

Yours faithfully,
(Sgd.)

H. D. C. JONES, *Manager*.

182

6086.

EXHIBIT "D-2."

Hongkong and Shanghai Banking Corporation.

MANILA, 28th December, 1904.

Messrs. Aldecoa & Co., Present.

DEAR SIR: With reference to the various conversations I have had with your Mr. Cecilio Tremoya and Mr. Fernando Zobel, the latter acting under written instructions from Mrs. Aldecoa in Spain, I wish to confirm the definite instructions I have received from our Board of Directors to have the firm's overdraft secured by suitable guarantees and a substantial reduction made in the amount of same.

I understand Mrs. Aldecoa has ample first class securities in Europe which if disposed of or pledged, with the Banks there, would place at her disposal, at a low rate of interest, a sum of money sufficient to reduce the firm's account here to P300,000 and I would suggest that arrangements be made to reduce Messrs. Aldecoa & Co's account here by at least P250,000 with the aid of Mrs. Aldecoa's securities in Europe.

Should Mrs. Aldecoa, from any unforeseen reason not be in a position to borrow money in Europe or dispose of her securities, I should be prepared to recommend our Board of Directors
183 that first class securities, to cover an amount of P250,000 be lodged with our London Office, 31 Lombard Street, or if more convenient, with our Agents, the Credit Lyonnais in Madrid, as security for this P250,000, which I understand it is the intention of Mr. Zobel and Mr. Tremoya to ask Mrs. Aldecoa to pay up.

If this latter plan be followed it would be necessary for the firm to make a minimum reduction annually of at least P60,000, dating from January 1st, 1905, as we are very anxious to see the firm's overdraft reduced without further delay.

As regards the balance of P300,000, I have no objection to allow the firm these facilities in working account for the purpose of financing their business, that is to say, for the purchase of rice, alcohol, sending down cash in exchange for shipments of hemp to Manila and Cebu; but this overdraft will also have to be covered by the hypothecation of local securities, satisfactory to the Bank, and on the express understanding that the firm here will make every effort to call in or considerably reduce their outstanding advances to Abacaleros in the provinces, and by so doing gradually do away with the necessity of this credit, which the Directors of the Bank are very anxious to see paid off, as they have issued definite instructions that in the future no advances are to be given to firms doing hemp business in Manila, except against hemp actually stored in godowns awaiting sale.

184 I would impress upon you the great necessity of the Bank to have the P250,000 which, it is hoped, Mrs. Aldecoa can assist with, paid in cash, if possible, as I am sure such action would go far to reassure our Directors as to the financial condition of your firm and cause a good impression generally.

In conclusion, I trust that this matter will finally and successfully be arranged before the 31st of March next, as I hope to leave here in April or May, and am very anxious that our business relations with your firm should be handed over to my successor on as sound and harmonious a basis as they were, previous to my departure in January, 1901.

Yours faithfully,
(Sgd.)

H. D. C. JONES, *Manager.*

185

6086.

EXHIBIT "D-3."

Hongkong and Shanghai Banking Corporation.

MANILA, 5th April, 1905.

Messrs. Aldecoa & Co., Present.

DEAR SIRs: I am in receipt of a letter from our Chief Manager dated 31st March in which he refers to an interview with Mr. A. S. Macleod regarding the firm's overdraft here. He repeated to this gentleman his wish to see the account put in good order without delay, and now again draws my attention to the matter and wishes me to press for large payments on account and furthermore arrange for a substantial yearly reduction and secured by necessary guarantee.

I know you are giving this matter your best attention, but in

view of the above letter, I trust that our Chief Manager's wishes may be complied — as soon as possible.

Yours faithfully,
(Sgd.)

H. D. C. JONES, *Manager*.

186

6086.

EXHIBIT "D-4."

Hongkong and Shanghai Banking Corporation.

MANILA, 11th May, 1905.

Messrs. Aldecoa & Co., Present.

DEAR SIR: The following is a copy of a telegram just received from our Head Office:

"With regard to Aldecoa & Co. as better cannot be done agree to your proposal if property ample security & foreclosure in case of default instalments."

I shall be much obliged if you will at once take the necessary steps to carry out their wishes as regards getting the property you propose to hypothecate duly reported on by a competent person, and I will instruct our lawyers to draw up the necessary legal documents in connection with the hypothecation of same.

I shall be glad if you will kindly reply to this letter at once so that I can wire our Head Office that the matter is in order.

Yours faithfully,
(Sgd.)

H. D. C. JONES, *Manager*.

187

6086.

EXHIBIT "D-5."

MANILA, June 5, 1905.

To the Manager of the "Hongkong & Shanghai Banking Corporation," Present.

DEAR SIR: By letter dated April 24, 1905, addressed to us by our mother Doña Isabel Palet Viuda de Aldecoa, she tells us that she objects to have her private property as well as ours mortgaged specially to your Bank to secure the credit in current account which that Bank has granted the firm of Aldecoa and Company.

As you know, we were ready to accede to your wishes in regard to this proposition to the extent that the draft of the instrument is already finished as you have seen; but, as in order to proceed, we needed the consent of our mother, not only by reason of our age, but because her private property was in part involved, she answers to our letter asking her consent in the form which we indicate above, telling us that she does not think necessary that her private property or ours be encumbered as you desire, since the firm of Aldecoa and Company has more than sufficient credit and property to answer for the debt which it may have with the Bank, and she understands

188 that should that special mortgage be executed, the smaller creditors which the firm of Aldecoa and Company might have, would be scared and the good name and reputation of said firm would suffer to some extent. For this reason our mother believes what we state above and what we now place within your knowledge.

As we are sure that the good name of that Bank of your direction shall find the reasons alleged by our mother worthy of consideration and that, therefore, it shall allow its credit to be secured, as it has heretofore been, with property of the debtor firm, we beg to remain

Very truly yours,
(S'g'd)

JOAQUIN I. DE ALDECOA.
ZOILO I. DE ALDECOA.

189

6086.

EXHIBIT "D-6."

Hongkong and Shanghai Banking Corporation.

MANILA, June 5th, 1905.

Messrs. Aldecoa & Co., Present.

DEAR SIR: I am very sorry to hear that you have received instructions from Mrs. Aldecoa that she is not now willing to hypothecate the securities which your firm has undertaken to deposit with us. I shall be much obliged if you will inform me in writing of her decision, and also her reasons for not complying with the promise made by her through you.

It is quite needless to say that our Head Office will view very disfavorably the decision not to lodge guarantees for your overdrawn account, which up to date you have shown every inclination to do, and I beg of you to at once telegraph to Mrs. Aldecoa to reconsider her decision and lay before her the serious consequences that may incur to the firm, should the Directors of the Bank decide to call on you for the early payment of the overdraft.

Yours faithfully,
(S'g'd)

H. D. C. JONES,
Manager.

190

6086.

EXHIBIT "D-7."

MANILA, June 8, 1905.

Mr. Jones, Present.

DEAR SIR: Yesterday, I received your courteous letter of same date though I have understood the general gist of it, I do not know English sufficiently enough to understand the same in a strict sense, for which reason I am having it translated by a person of my full

and complete confidence in order to decide afterwards what is to be done.

I write you these few lines so that you may see that I am not neglecting this matter; and without anything further to say, I remain

Yours truly,
(S'g'd)

F. ZOBEL.

191

EXHIBIT "D-8."

Hongkong and Shanghai Banking Corporation.

MANILA, 22nd June, 1905.

6086.

Messrs. Aldecoa & Co., Present.

DEAR SIR: I enclose copy of reply from the Chief Manager, regarding Mrs. Aldecoa's refusal to hypothecate her property against your firm's debt.

You will see from same that our Board of Directors, while very anxious to assist the firm, insist on the partners using every effort to help with the same object in view, and I sincerely trust that a prompt and favourable wire will arrive from Mrs. Aldecoa enabling us to come to some satisfactory understanding as regards your account.

Yours faithfully,
(Sgd.)

H. D. C. JONES,
Manager.

Hongkong and Shanghai Banking Corporation.

HONGKONG, 15th June, 1905.

MY DEAR JONES:—I have your letters of the 8th, 9th and 12th inst. Aldecoa & Co. We are, to say the least of it, very much
192 surprised that Mrs. Aldecoa should have written to her sons prohibiting them from hypothecating the promised property as collateral security against the large amount standing to the debit of the firm in your books. As you know, the account is from our point of view far from being in a satisfactory position, and it has only been allowed to stand over on your assurances that Mrs. Aldecoa was coming forward with the property as additional security.

We do not agree with the view she is now said to take, that the hypothecation of her property would be damaging to the good name of the Firm; on the contrary we believe when it is known that Mrs. Aldecoa is backing the Firm it will improve their credit and we would therefore request that most urgent representations be made to Mrs. Aldecoa through her Firm to reconsider her decision. We would regret being forced to do anything that might affect the credit of the Firm, but the Bank's interest has to be safeguarded, and we must

therefore insist upon the Firm carrying out the promises given, failing which it will be necessary to ask you to hand over the affair to your Lawyers to report on the advisability of taking legal steps to recover the money. As this is such an important matter we hope Mrs. Aldecoa may be communicated with by telegram, and we trust that she will not drive us to adopt such measures as above indicated.

Yours very truly,

(Sgd.)

(Sgd.) H. D. C. JONES,
Manila.

J. C. PETER.

193

EXHIBIT "D-9."

Hongkong and Shanghai Banking Corporation.

MANILA, 5th September, 1905.

6086.

Messrs. Aldecoa & Co., Present.

DEAR SIR: I am requested by our Chief Manager to send him as soon as possible a copy in detail of your last balance sheet, giving in a separate column, full particulars of each item on the credit side with your conservative views as to the value of same, also a full list in detail of your depositors giving a note showing the amounts due to the family and the position of the firm as regards these debit.

Yours Faithfully,

(Sgd.)

H. D. C. JONES,
Manager.

194

EXHIBIT "D-10."

Hongkong and Shanghai Banking Corporation.

MANILA, 7th October, 1905.

6086.

Messrs. Aldecoa & Co., Manila.

DEAR SIR:—I am instructed by our Board of Directors, under date of 29th September, to inform you that they are unwilling to accept the form of escritura by Mrs. Aldecoa, rough copy of which was submitted them for approval last month, and request an early liquidation of the firm's overdraft with this Bank, unless Mrs. Aldecoa consents to legally mortgage her property in the Philippines to the Bank, in which case they are willing, on their part, to include a clause, under which property hypothecated cannot be sold for a period of five years, should the firm of Aldecoa & Co., not in the meantime be liquidated; and furthermore, in the event of Mrs. Aldecoa agreeing to these conditions, they will consent to a reduction of the over-

draft at a minimum rate of P50,000 per annum and interest, until extinguished or reduced to a point satisfactory to the Bank.

You will receive in due course a legal demand for payment of your debt in this Bank from our lawyers, Messrs. Coudert Brothers.

Yours faithfully,
(Sgd.)

H. D. C. JONES,
Manager.

195 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part II.

Before Judge Crossfield.

Civil Case. No. 6086.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET, and ZOLIO IBAÑEZ DE ALDECOA Y PALET, Plaintiffs,
against

ALDECOA Y COMPAÑIA, en Liquidacion; ISABEL PALET GABARRO, Widow of Ibanez de Aldecoa, and the Hongkong and Shanghai Banking Corporation, Defendants.

Decision.

This case is before the Court for trial upon an amended complaint by the plaintiffs to have a document, or instrument of mortgage, executed by the plaintiffs and the defendants on the 23th day of February, 1906, to secure the payment of an account current between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, declared null and void and the plaintiffs relieved from responsibility on account thereof, on the ground that at the time of the execution of said document or instrument of mortgage the plaintiffs were minors and incompetent
196 to make and execute the same.

The defendant Aldecoa and Company answered admitting part of the allegations of the complaint, and set up as a special defense that the plaintiffs were minors but more than eighteen years of age, and that they had been emancipated by their mother the defendant Isabel Palet Gabarro, and that they voluntarily mortgaged some of their property for the purpose of securing paying of an account between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation.

The defendant Isabel Palet Gabarro answered setting forth the fact that she had emancipated the plaintiffs, her children, after they were eighteen years of age, supposing that she had authority to do so, and that she had consented to their executing the mortgage upon their property to secure an account current between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, supposing that she had power to authorize it by giving

consent, but that she was in error, and asked that they be relieved from the responsibility incurred by them in the execution of the document.

Sr. Alfredo Chicote appeared in behalf of the plaintiffs: Sr. Antonio Sanz for the defendant Aldecoa and Company; Sr. Maximino Mina for the defendant Isabel Palet Gabarro; and Mr. Charles
197 C. Cohn for the defendant Hongkong and Shanghai Banking Corporation.

From the evidence presented at the trial I find: "That the plaintiff Zoilo Ibañez de Aldecoa y Palet at the time of the commencement of this action was a minor, duly represented by his guardian ad litem Vicente Miranda and the plaintiff Joaquin Ibañez de Aldecoa is of lawful age and appears in his own behalf."

That the defendant Aldecoa and Company, in liquidation, is a sociedad colectiva mercantil, and duly registered in the mercantil registry, and that William Urquhart is the liquidator:

The defendant Isabel Palet Gabarro is one of the capitalist-partners of the defendant firm Aldecoa and Company:

That the defendant Hongkong and Shanghai Banking Corporation is a corporation duly organized and doing business in the city of Manila, and properly registered:

That on the 31st day of December, 1896, the plaintiffs, according to a public document, became industrial partners in the aforementioned partnership of Aldecoa and Company, and they so continued until the document was declared null and void by this Court, in so far as plaintiffs were concerned, by judgment ordered September 5th, 1908:

That on the 31st day of July, 1903, Isabel Palet Gabarro, mother
198 of the plaintiffs, their father being dead, by public document executed before a Notary Public in Manila, emancipated each of the plaintiffs, they each then being more than eighteen years of age;

That on the 23rd day of February, 1906, the defendant Aldecoa and Company was debtor in a large amount upon an account current with the defendant Hongkong and Shanghai Banking Corporation, and was threatened by the bank with proceedings to collect the amount due, which would have been the destruction of its business unless payment of the debit of the account was secured in some way, and that thereupon the plaintiffs, believing that they were industrial partners in the firm of Aldecoa and Company and being anxious to protect the good name of their father and preserve the name of the Company, at the head of which their father had for a long time been, and in consideration of the indebtedness of Aldecoa and Company before mentioned and of certain agreements made on the part of defendant bank and the defendant Aldecoa and Company, joined in executing a document with the defendants, whereby they, with their mother, through her attorney Fernando Zobel, mortgaged their undivided interests in certain real property to secure payment of said indebtedness:

That when this document was executed, the plaintiffs exercised the emancipation which had been conceded them by their mother,

as hereinbefore stated, and executed the document with her consent.

It must be concluded that the mortgage was executed with her consent because in the document Exhibit "F", in which she authorized Fernando Zobel to act for her, she authorized him to execute the mortgage in question in conjunction with her sons, the plaintiffs, and they otherwise had her consent though objection was made in the first place to the making of the mortgage.

The mortgage was duly executed, the consideration therefor existed, the plaintiffs were duly emancipated under the provisions of the Civil Code, and they had the consent of their mother, in the absence of their father, to execute the mortgage.

The only questions which remain to be determined are: "Did the mother of the plaintiffs have power at law to emancipate her children, the plaintiffs, so that they could freely dispose of or mortgage their real property, having her consent so to do?"

Under the laws in force in the Philippine Islands at the time the documents of emancipation, hereinbefore referred to, were executed, the father, or in case of his death or disqualification, the mother of a minor child, is the natural guardian of the child and is entitled to its custody, but not of its estate, unless it is so ordered by the Court. (See Section 553 of Act 190.)

Clearly then the mother, being the natural guardian of the plaintiffs, but not having the legal custody of their estate, for it nowhere appears that the Court has ordered their estate into her custody, or in any way subrogated it to her control, might emancipate the plaintiffs from her personal custody, but could not authorize them while minors to dispose of or mortgage their real estate, without the sanction of the Court.

The document executed by the plaintiffs on the 23rd day of February, 1906, whereby they mortgaged certain of their real property to the defendant bank, was without authority in so far as these plaintiffs are concerned, and the plaintiffs are entitled to have it declared null and void as to them, and the registry of it as to them and their interest in the real estate described therein cancelled.

Let judgment be entered in favor of the plaintiffs, Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet, and against the defendants, Aldecoa and Company, in liquidation, Isabel Palet Gabarro, widow of Ibañez de Aldecoa, and the Hongkong and Shanghai Banking Corporation, declaring a document made and executed by the plaintiffs with the defendants on the 23rd day of February, 1906, whereby plaintiffs mortgaged certain undivided interests which they had in real estate to secure the payment of the current account existing between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, to be null and void as to the plaintiffs, and the registry thereof in the registry of property, so far as the plaintiffs are concerned, be cancelled.

No costs will be taxed.

Manila, P. I., March 28th, 1910.

(Signed)

A. S. CROSSFIELD, Judge.

This 4th day of April, 1910, the parties were notified of the above decision.

(Signed)

JOSE CASIMIRO,
Deputy Clerk.

(Title of the Case Omitted.)

202 Now comes the Hongkong and Shanghai Banking Corporation one of the defendants in the above entitled case and files its exception against the decision of this Court rendered on March 28th, 1910, and asks that this exception be duly recorded in the registry of this Court.

Manila, P. I., April 5, 1910.

HAUSSERMANN, COHN & FISHER,
(Signed) p. p. CHARLES C. COHN,
*Attorneys for the Hongkong &
Shanghai Banking Corporation.*

Received copy this 6th day of April, 1910.

(Signed) CHICOTE AND MIRANDA,
For Sanz and Opisso.

(Sgd.) EMILIANO TRINIDAD,
(Signed) MAXIMINO MINA,
Attorneys for Doña Isabel Palet Viuda de Aldecoa.

203

(Title of the Case Omitted.)

Now comes the Hongkong and Shanghai Banking Corporation. One of the defendants of the above entitled case and asks this Court to set aside the decision rendered in this case on March 28, 1910, and to order that a new trial be had, on the following grounds:

1st. Because the evidence is not sufficient to justify the decision of this Court.

2nd. Because it is contrary to law.

3rd. Because the findings of fact are openly and manifestly against the weight of the evidence.

Manila, P. I., April 5, 1910.

Respectfully submitted,

HAUSSERMANN, COHN & FISHER,
p. p. CHARLES C. COHN,
*Attorneys for the Hongkong &
Shanghai Banking Corporation.*

Received copy this 6th day of April, 1910.

CHICOTE AND MIRANDA,
Attorneys of the Plaintiffs—For Sanz and Opisso.
EMILIANO TRINIDAD,

Attorneys for Aldecoa and Company in Liquidation.
(Signed) MAXIMINO MINA J. M.,
Attorney for Isabel Palet, Viuda de Aldecoa.

Stamped: Filed this 6th day of April, 1910 at 12:15 p. m.
(Signed) Jose Casimiro, Deputy Clerk.

204

(Title of the Case Omitted.)

Messrs. Sanz, Mina & Cohn, Attorneys for the Defendants.

GENTLEMEN: You are hereby notified that on the 9th instant at 8 a. m. or as soon thereafter as possible we shall ask the Honorable Judge who presides part IV of the Court of First Instance of Manila to overrule the motion for a new trial asked by the defendant the Hongkong and Shanghai Banking Corporation in the above entitled case.

Manila, April 6, 1910.

(Signed)

CHICOTE AND MIRANDA,

Attorneys for Plaintiffs.

Received copy this 6th day of April, 1910.

(Signed)

HAUSSERMANN, COHN AND FISHER,
JOHN HAUSSERMANN,*Attorneys for the Defendant the Hongkong and
Shanghai Banking Corporation—For Sanz and Opiiso.*

(Signed)

RAMON AGCAOILI,

Attorneys for Aldecoa and Company in Liquidation.

Stamped: Filed this 7th of April 1910 at 10:30 a. m. (Signed)
Jose Casmiro, Deputy Sheriff.

(Title of the Case Omitted.)

Now comes the defendant the Hongkong and Shanghai Banking Corporation and respectfully asks that the judgment rendered in this case be set aside and a new trial granted in said case, basing this petition in the following motive, which materially affects its legitimate rights; to wit:

205 That there is newly discovered evidence necessary for this petitioner, who notwithstanding all due diligence and care exercised in this case has not been able to discover and offer same at the trial of this case, until now.

This motion is based on all the documents and pleadings filed in this case, on this notice and on the sworn declaration of Charles C. Cohn attached hereto.

Respectfully submitted,

(Signed) p. p. CHARLES C. COHN,

*Attorneys for the Hongkong & Shanghai Banking
Corporation.*

Received copy this 12 day of April, 1910.

(Signed)

SANZ AND OPISSO.

(Signed)

CHICOTE AND MIRANDA.

Received copy this 12 day of April 1910.

(Signed)

MAXIMINO MINA,

Attorneys for Doña Isabel Palet.

(Title of the Case Omitted.)

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

CHARLES C. COHN after being duly sworn deposes and says:

That he is now and has been at all times since the first day of January 1906, one of the attorneys of the Hongkong & Shanghai Banking Corporation; that there is a public document executed on June 13th 1907, before the notary public of the City of Manila, Mr. D. R. Williams, copy of which is attached to this affidavit and made part thereof.

206 That under and by virtue of said document, the mortgage of February 23, 1906, which is the subject matter of this action, is confirmed and ratified by Mr. Joaquin Ibañez de Aldecoa, by himself, and by Mr. Zoilo Ibañez de Aldecoa through his attorney in fact Don Jose Maria Ibañez de Aldecoa; that such confirmation and ratification are final and obligatory as regards Plaintiff Zoilo Ibañez de Aldecoa.

That said instrument dated June 13, 1907, was not offered in evidence by the defendant at the date of the trial, because the affiant did not know that in said instrument express mention was made of the mortgage in question; that from February 26, 1903, up to the present time, in the mutual transactions had by and between Aldecoa and Company in Liquidation and the Hongkong and Shanghai Banking Corporation, a good many instruments have been executed, not less than forty in number, and, although deponent has intervened personally in the drafting and execution of almost all of said instruments, he has been unable to remember the contents of each and every one of them; that on the day of the trial of the above entitled case, deponent believed that each and every one of the instruments, agreements and documents executed by and between the Hongkong and Shanghai Banking Corporation and Aldecoa and Company in liquidation were executed only by the liquidator of said firm, and by a natural oversight, which ordinary diligence could not prevent,

207 was ignorant of the fact that said instrument dated June 13, 1907, which mainly refers to a judicial bond for an injunction against Mr. Alexander S. Macleod,—was executed by the plaintiffs in this case, and that said instrument made reference and affected the mortgage of February 23, 1906; that the relation between said instrument and the mortgage was accidentally discovered by the affiant on this date, April 11, 1910, at the trial of an action regarding certain shares of stock which belonged to Aldecoa and company, which trial was set for to-day.

Manila, P. I., April 11, 1910.

(Signed)

CHARLES C. COHN.

Subscribed and sworn to before me this 11th day of April, 1910;

affiant exhibited his Certificate of Registration, letter F, No. 4736, issued in Manila on the 14th day of January, of the present year.
 (Signed) FLORENCIO GONZALES DIEZ,
Notary Public.

My Commission expires December 31st., 1910.

[NOTARIAL SEAL.]

Stamped: Filed on the 12 of April, 1910, at 10:30 a. m. (Signed)
 J. McMicking, Clerk.

This memorandum of agreement, made and executed this 13th day of June, 1907, by and between Don Joaquin Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet, and Doña Isabel Palet y Gabarro, viuda de Aldecoa, all of them the parties of the
 208 first part, Aldecoa and Company in liquidation the party of the second part, and the Hongkong and Shanghai Banking Corporation, the party of the third part;

Witnesseth: that by, and in consideration of a certain bond executed by the party of the third part, for the sum of Fifty Thousand Pesos (P50,000.00), in the suit which is about to be filed by the party of the second part against Mr. Alexander S. Macleod, over certain shares of stock of the "Pasay Estate Co. Ltd.", the value of which amounts to One Hundred and Sixty Thousand Pesos (P160,000.00) Philippine Currency, which bond is to be furnished in order to obtain an injunction against the sale of said shares of stock or the proceeds thereof while the case be pending in Court.

The parties of the first part and of the second part agree and covenant as follows:

1. That the proceeds of said suit against said Alexander S. Macleod, in case the judgment rendered be favorable to the plaintiff, shall be applied in full to the payment pro tanto of the sum which the firm of Aldecoa and Company, or Aldecoa and Company in liquidation, owes to the party of the third part, deducting only from said proceeds the necessary expenses of said action, including the fees of the attorneys who are to represent the said plaintiff, the balance to be delivered to the creditor bank for the purpose above mentioned.

2. That in case said Hongkong and Shanghai Banking Corporation, should incur in any liability as bondsman in said suit, the obligation of the firm of Aldecoa and Company to indemnify
 209 said Bank from said liability shall be added to the sum which the said firm owes the said Bank and the payment thereof shall be secured by the same mortgages executed, mentioned and described in the instrument which the parties of the first and of the second part executed in its favor on the 23rd day of February, 1906, (a copy of which is attached to and made part of this document) under the terms and conditions of said mortgage.

3. That the Hongkong and Shanghai Banking Corporation shall not be directly or indirectly liable for the payment of the costs or expenses of the above mentioned suit, that is to say, for the Court fees, attorneys' fees, etc., etc.

4. That the contracting parties above named bind themselves to execute whatever documents or instruments may be necessary to secure or duly record the purposes above stated.

In Witness Whereof, the parties hereto sign this document in Manila, this 13th day of June nineteen hundred and seven (1907).

	ISABEL PALET AND
	ZOILO IBAÑEZ DE ALDECOA,
(Signed)	p. p. J. M. Y. DE ALDECOA.
	ALDECOA AND COMPANY IN
	LIQUIDATION,
(Signed)	By WILLIAM URQUHART.
(Signed)	JOAQUIN Y. DE ALDECOA.

For the Hongkong & Shanghai Banking Corp'n,
(Sgd.) A. G. STEPHEN, *Manager*.

In the presence of:
(Signed) CHARLES C. COHN.

210 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

In the City of Manila, this 13th day of June, 1907, before me personally appear Don Jose Maria Ibañez de Aldecoa, as attorney in fact and legal representative of Doña Isabel Palet y Gabarro viuda de Aldecoa, and of Don Zoilo Ibañez de Aldecoa y Palet; Don Joaquin Ibañez de Aldecoa y Palet by his own right, Mr. William Urquhart as liquidator of the firm of Aldecoa and Company in liquidation, and Mr. Alexander Gordon Stephen on behalf of the Hongkong and Shanghai Banking Corporation, whom I know to be the persons who executed the foregoing document which they ratify and state the same to be an act of their free will and deed.

Said gentlemen exhibited their Certificates of Cedula, the first, No. 674, issued at Manila the 6th of June, 1907; the second, No. B164876, issued at Manila the 13th of May, 1907; the third, No. A1488603, issued at Manila the 8th of February, 1907; and the last, No. A1479705, issued at Manila the 18th of January, 1907.

In witness whereof, I have hereunto set my hand and official seal, at the foot of this certificate, the day, month and year above said.

(Signed)
[NOTARIAL SEAL.]

D. R. WILLIAMS,
Notary Public.

My Commission expires December 31st, 1908.

211 (Title of the Case Omitted.)

Now comes counsel of plaintiff in the above entitled case and excepts to the decision of the Court re-rendered in said case and asks that the same be duly recorded in the Registry of this Court.

Manila, April 12, 1910.

(Signed)

CHICOTE & MIRANDA,
Attorneys for Plaintiff.

Received copy this 13th of April, 1910.

HAUSSERMANN, COHN & FISHER,
(Signed) p.p. CHARLES C. COHN,
Attorneys for the Hongkong & Shanghai Banking Corporation.

For Sanz & Opisso,
(Signed)

RAMON AGCOAILI,
*Attorneys for the Defendant Aldecoa & Co.
in Liquidation & William Urquhart.*

Stamped: Filed this 13th day of April, 1910, at 11:00 a. m.
(Signed) Jose Casimiro, Deputy Clerk.

(Title of the Case Omitted.)

Order.

This case is before the Court for hearing the motion for a new trial made on the part of the defendant Hongkong and Shanghai Banking Corporation.

C. C. Cohn, Esq., appeared in behalf of the bank, Sr. Chicote for the plaintiffs.

212 The motion for a new trial is based upon error at law in the judgment, particularly upon the ground that the document which was ordered annul-ed, was executed by minors properly emancipated by their mother and that she under the Civil Code as the mother, in the absence of the father, had full control and administration of their property and could emancipate and consent to their alienation of their property.

This contention would be undoubtedly true if it was not for the provision of section 553 of Act 190 which provides, that the father, or in the case of his death or legal disqualification, the mother of the children, is the natural guardian of the children, but not of their estate unless it is so ordered by the Court.

This changes the status of natural guardians so that they can not dispose of the estate of their children without the order of the court. The mother of the minor plaintiffs could not have transferred their property nor mortgage it without the consent of the court, and I am of the opinion that neither could she emancipate them nor give her consent to the doing of that which she could not do herself as the natural guardian.

The plaintiffs urge that not only is the judgment justified for the reasons stated, but that it is further justified by the mortgage which has been annul-ed; that the mother of the minors to whom she gave

her consent to the mortgage, received benefit therefrom, and
213 this is prohibited at law. That might be true and would prohibit her in case recovery was made against her upon the mortgage from asking contribution from her children, but it would be of no avail as against the mortgage of the Hongkong and Shanghai Banking Corporation.

I am of opinion that no good ground has been shown for a new trial and the motion is therefore denied.

Manila, P. I., April 12th, 1910.

A. S. CROSSFIELD, *Judge.*

This 14th day of April, 1910, the parties were notified of the above order.

(Signed)

JOSE CASIMIRO,
Deputy Clerk.

(Title of the Case Omitted.)

Now comes counsel for the plaintiffs in the above entitled case and asks the Court that by a new trial or in the manner it may be deemed convenient, the decision rendered in said case be modified, including as reasons for the petition to declare the mortgage null and void, the following:

1. That the plaintiffs signed the document dated February 26, 1906, which it is sought to have declared null and void in this case, due to the fact that the persons named in paragraph fifth of the amended complaint and especially Mr. Alexander S. Macleod, deceitfully made these plaintiffs believe that they were general
214 partners (socios colectivos) of Aldecoa & Company and that their private property should, of course, go to the creditor of said firm the Hongkong & Shanghai Banking Corporation.

That Doña Isabel Palet, mother of the plaintiffs, ordered them to be parties to and execute the said document.

That the purpose of said document was to obtain from the Hongkong & Shanghai Banking Corporation, a credit for Four Hundred and Seventy-five thousand Pesos (P475,000.).

That such document was, in regard to these plaintiffs, a purely nominal obligation and without any legal effect whatsoever; which statements and representations were false and directed to induce these plaintiffs to error, and these plaintiffs by such error were parties to the said contract of February 23, 1906.

2. That the consideration for said document, as regard these plaintiffs, is false, for the reason that these plaintiffs, not being partners of Aldecoa & Company were not bound to anything; nor was the sum of P475,000 a new credit which the Hongkong & Shanghai Banking Corporation granted to Aldecoa & Company but it was a sum already due in full by Aldecoa & Company to the Hongkong & Shanghai Banking Corporation and payable to the latter at that time.

As a legal basis for annulling said document, the judgment must be amplified with the statement that said document is furthermore
215 null and void in regard to plaintiffs by reason of the false statements and representations through which plaintiffs were induced to sign said document; and as a further reason to annul said document; that it contains a false consideration in regard to the plaintiffs, inasmuch as these plaintiffs were not partners of Aldecoa & Company nor was it true that the Hongkong & Shanghai Banking Corporation should by such document open a credit for

P475,000 in favor of Aldecoa & Company, nor was it true that, if said document had not been executed, plaintiffs would have suffered the loss of all their property on account of the insolvency of Aldecoa & Company.

Manila, April 12th, 1910.

(Signed)

CHICOTE & MIRANDA,
Attorneys for the Plaintiffs.

Received copy this 14th of April, 1910.

(Signed)

HAUSSERMANN, COHN & FISHER,
*Attorneys for the Hongkong & Shanghai
Banking Corporation.*

(Signed)

SANZ & OPISSO,
*Attorneys for the Defendant Aldecoa &
Company in Liquidation and W. Urquhart.*

(Signed)

MAXIMINO MINA,
*Attorney for the Defendant, Isabel
Palet y Gabarro.*

Stamped: Filed on the 14th of April, 1910, at 10:00 a. m. —
—, Clerk.

(Title of the Case Omitted.)

Now comes defendant Hongkong & Shanghai Banking Corporation through its attorneys and excepts to the order of this Court dated April 12, 1910, rendered in the above entitled case, denying the motion for new trial filed by said Hongkong & Shanghai Banking Corporation, and likewise announces its intention to file a bill of exceptions and carry the same to the Supreme Court of the Philippine Islands.

Manila, P. I., April 14, 1910.

(Sgd.)

HAUSSERMANN, COHN &
FISHER,
p. p. CHARLES C. COHN,
*Attorneys for Defendant, The Hongkong
& Shanghai Banking Corporation.*

Received copy this 14th of April, 1910.

(Signed)

CHICOTE & MIRANDA,
Attorneys for the Plaintiffs.

(Signed)

MAXIMINO MINA,
*Attorney for Doña Isabel
Palet, Widow of Aldecoa.*

Stamped: Filed this 14th of April, 1910, at 11:30 a. m. (Signed)
J. McMicking, Clerk.

(Title of the Case Omitted.)

Stamped: Court of First Instance Manila, P. I., April 16, 1910.
Clerk's Office.

Now comes the counsel for plaintiffs and objects to the motion of the defendant The Hongkong and Shanghai Banking Corporation asking that the judgment rendered in this case be set aside
217 and new trial be had of said case.

The reasons of this objection are the following:

1. That the evidence which in the petition is alleged to be newly discovered consists of the document attached to said motion and as it can be seen, both the Hongkong & Shanghai Banking Corporation as well as its attorneys, had full knowledge of the existence of said document from the very same date in which it was executed, to wit, from the 13th day of June, 1907, for the reason that said defendant was one of the parties who executed the said document attached to its motion, and said document was ratified before one of the members of the law-firm representing the defendant, who acted as a Notary Public, and was furthermore subscribed by another one of the members of said law-firm who acted as witness.

2. That the defendant the Hongkong & Shanghai Banking Corporation as well as its attorneys in this case, had full knowledge of the contents of said document long before the date of this motion and long before judgment was rendered in this case, for the reason that: in Civil case No. 6087 of this Court the document referred to and attached to the motion for a new trial, was offered by said defendant and its attorneys, who in said case No. 6087 of this Court, made special, complete and direct use of the said document and pleaded the same conclusively and specially on September 2, 1909, at which date this case wherein a new trial is asked, had not been decided yet by
this Court, as it all appears from the affidavit attached hereto.

218 3. That the evidence referred to in the motion, besides not being newly discovered is furthermore unnecessary for the petitioner for the reason that the answer given by petitioner in this case consists of a general denial of the facts alleged in the complaint without setting forth any special defense which may contain the allegation that the contract referred to in the complaint, should have been at any time confirmed or ratified, and without having raised any issue as to this fact during the trial. And therefore, what is now alleged to be a necessary proof in this case, is not so, either to contradict any evidence or fact alleged by plaintiffs or to prove any allegation of any of the parties defendant in this case; and this being so, said document is irrelevant and absolutely unnecessary as evidence.

4. The motion, furthermore, is improper, because the document attached to the petition for a new trial is not a confirmation of the contract, as alleged by the defendant for the reason that, in accordance with the provisions of the Civil Code, Articles 1309-1310 and 1311, the confirmation may be made either expressly, that is to say, making over the contract in order to purify and confirm it, or tacitly, in which case it is necessary that it shall appear in an unmistakable

manner at the time of executing the act alleged to confirm the prior null contract: 1st. That the party confirming said contract shall have full knowledge of the cause of the nullity of the prior contract to which the tacit confirmation is said to refer; and 2nd.:
 219 That the act done shall imply the will to waive the cause of nullity (Article 1311), And besides, because only those contracts can be confirmed which contain all the essential requisites for the existence of a contract, and in this present case, said contract is voidable and is judicially declared void and null by reason of the fact that Joaquin Ibañez de Aldecoa could not, and never did consent to the contract of February 23, 1906, pronounced null and void by the judgment rendered in this case.

5. And, finally, the motion of the defendant The Hongkong & Shanghai Banking Corporation is improper because the document attached to said motion is, by itself, also null and void, for the reason that said contract was executed by Joaquin Ibañez de Aldecoa under the belief, and on consideration that said Joaquin Ibañez de Aldecoa was a general partner (socio colectivo) of the firm of Aldecoa and Company, and it is a fact that said Joaquin Ibañez de Aldecoa was not, at the time of the execution of the document attached to the motion, a partner of Aldecoa and Company, nor was he liable under any consideration for any of the obligations contracted by said partnership or firm. All of which was maliciously concealed from said Joaquin Ibañez de Aldecoa who was made to believe just the opposite.

Wherefore, counsel for plaintiffs asks that the petition of the defendant The Hongkong and Shanghai Banking Corporation asking
 220 that the judgment be set aside and a new trial granted in this case, be denied.

Manila, April 15., 1910.

(Signed)

CHICOTE & MIRANDA,

Attorneys for the Plaintiffs.

Received copy this — day of April, 1910.

(Signed)

HAUSSERMANN, COHN AND
 FISHER,

*Attorneys for the Hongkong
 and Shanghai Banking Corporation.*

(Title of the Case Omitted.)

I, Alfredo Chicote y Beltran, attorney at law, of lawful age and resident of this City, under oath, taken in due form, solemnly state:

That I am and have been for some years prior to this date, one of the members of the law firm of Chicote and Miranda.

That I am acquainted with civil cases Nos. 6086 and 6087 of the Court of First Instance of the City of Manila, and I know also the supplementary proceedings on execution in the said case No. 6087 against certain property alleged to belong to the defendants in said case, Aldecoa and Company, and in the possession of the Hongkong & Shanghai Banking Corporation.

That I know personally and of my own knowledge that the docu-

ment dated June 13, 1907, referred to in the motion for the reopening of case No. 6086, makes express reference to the instrument dated February 23, 1906, and this last named instrument is made an integral part of the other document dated June 13, 1907, and its contents included in the contents of the latter,

221 That in case No. 6087 above referred to, The Hongkong and Shanghai Banking Corporation pleaded under the oath of its Manager, Mr. Stephen, the document dated June 13, 1907, and argued about the contents thereof and therefore, said defendant and its attorneys had special, full and direct knowledge of all of its contents, and therefore, of the contents of the instrument dated February 23, 1906, made a part thereof: and that said oath and pleading were made in September 1909 and that on several occasions later on, the attorneys of the defendant, The Hongkong and Shanghai Banking Corporation made allegations about the same fact in case No. 4793 of this Court, as it all appears more in detail in the report made in case No. 6087 and especially in the supplementary proceedings instituted by the plaintiffs in this case towards obtaining from the Hongkong and Shanghai Banking Corporation the delivery of certain shares of stock of the Pasey Estate described in said case.

Manila, April 15th., 1910.

(Signed)

ALFREDO CHICOTE.

Subscribed and sworn to before me this 16th. day of April, 1910, having exhibited his personal cedula No. F. 25693, issued at Manila on the 4th. day of March, 1910.

(Signed)

J. McMICKING, *Clerk.*

222

(Title of the Case Omitted.)

Order.

This case is before the Court for the hearing of the second motion of the defendant the Hongkong and Shanghai Banking Corporation for a new trial of this case on the ground that new evidence has been discovered.

Attorney Mr. Chicote appeared on behalf of the plaintiff and Mr. Cohn on behalf of the Hongkong & Shanghai Banking Corporation who submitted the motion without argument.

The motion is based on the affidavit of Charles C. Cohn on newly discovered evidence, consisting of a public document a copy of which is attached to the affidavit, and seems to ratify the mortgage executed on February 23, 1906, which has been declared null and void in regard to plaintiffs by the judgment rendered in this case.

Said document is executed by plaintiff Zoilo Ibañez de Aldecoa, through his Attorney in fact J. M. Y. de Aldecoa, and by plaintiff Joaquin I. De Aldecoa, on the 13th day of June, 1907.

By the evidence adduced before this Court I am of the opinion that plaintiff Zoilo I. de Aldecoa, was not then of lawful age and that plaintiff Joaquin I. de Aldecoa was of lawful age and could lawfully execute said document.

It appearing that this is a newly discovered evidence and that it bears on the issues raised in the present case.

223 It is hereby ordered that the motion for a new trial be and is hereby granted in what may affect plaintiff Joaquin I. de Aldecoa.

Manila, April 27, 1910.

(Signed)

A. S. CROSSFIELD, *Judge.*

This 28th of April, 1910, the parties were notified of the foregoing decision.

(Signed)

JOSE CASIMIRO,
Deputy Clerk.

(Title of the Case Omitted.)

Stipulation.

Whereas the Court of First Instance of the City of Manila prior to this date rendered judgment in the above entitled case in favor of the plaintiffs herein, against which judgment, The Hongkong and Shanghai Banking Corporation duly excepted, and,

Whereas the motion for a new trial, based on the ground that said judgment is clearly and manifestly against the weight of the evidence adduced in this case and is contrary to law, has been denied, said defendant having duly excepted to the order denying said motion, and

Whereas the motion for a reopening of the case on the ground of newly discovered evidence material to the issues in this case
224 and affecting in all probability the decision in this case, has been granted in so far as it affects one of the plaintiffs, to wit: Joaquin Ibañez de Aldecoa,

Therefore, by and in consideration of the above, it is hereby stipulated and agreed by and between the undersigned parties to this stipulation that when the new trial has been had and the Court shall have rendered a decision in the same, the Hongkong and Shanghai Banking Corporation shall be, as it is hereby, granted a term of twenty days from the date of the judgment to be rendered therein, to prepare and deliver and file within said term a copy of a Bill of Exceptions for its appeal against the judgment rendered in favor of Zoilo Ibañez de Aldecoa, to the same effect as if said judgment should have been the only one rendered in said case and as if said judgment in favor of Zoilo Ibañez de Aldecoa were an integrant part of the judgment to be rendered later on the rehearing granted, as aforesaid.

Manila, P. I., May 11th, 1910.

(Signed)

CHICOTE AND MIRANDA,
Attorneys for plaintiffs.

(Signed)

HAUSSERMANN, COHN &
FISHER,

(Signed)

p. p. CHARLES C. COHN,
*Attorneys for the Hongkong & Shanghai
Banking Corporation.*

(Signed)

SANZ & OPISSO,
Attorneys for the Other Defendants.

Stamped: Filed on the 11th of May, 1910, at 12:15 p. m.
(Signed) F. Canllas, Clerk.

225 (Title of the Case Omitted.)

Messrs. Haussermann, Cohn & Fisher, Attorneys for the Defendant
"The Hongkong & Shanghai Banking Corporation".

GENTLEMEN: Please take notice that on September 12th., 1910, at 10 a. m. before the Honorable A. S. Crossfield, we shall take the deposition of Don Joaquin Ibañez de Aldecoa, one of the plaintiffs, in order to offer the same in evidence at the new trial which is to be had in the above entitled case.

The reason for the taking of said deposition, appears from the sworn statement attached hereto.

Manila, September 8th, 1910.

(Signed)

CHICOTE AND MIRANDA,
Attorneys for Joaquín I. de Aldecoa.

Received copy this 8th day of September, 1910.

(Signed)

CHARLES C. COHN,
Attorney for the Hongkong Bank.

Stamped: Court of First Instance, Manila, P. I., September 9th, 1910. Clerk's Office.

226 (Title of the Case Omitted.)

CITY OF MANILA,

Philippine Islands, ss:

I, Joaquin Ibañez de Aldecoa, under oath, taken in legal form, state: That I am one of the plaintiffs in the above entitled action: That I am about to leave the City of Manila and in all probability shall be absent from said City when the hearing of the above entitled case takes place, wherein my testimony is necessary.

All of which I state under this my oath.

(Signed)

JOAQUIN IBAÑEZ DE ALDECOA.

Subscribed and sworn before me this 8th day of September, 1910 A. D., Affiant exhibited his personal cedula No. F. 27748, issued at Manila on the 9th of March, 1910.

[NOTARIAL SEAL.]

(Signed)

GABRIEL LA O.

Notary Public.

Until December 31st, 1910.

227 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part II.

Before Judge Crossfield.

Civil Case. No. 6086.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET and ZOILO IBAÑEZ DE
ALDECOA Y PALET, Plaintiffs,
against
ALDECOA AND COMPANY IN LIQUIDATION, ISABEL PALET GABARRO,
Widow of Aldecoa, and the Hongkong and Shanghai Banking
Corporation, Defendants.

Proceedings.

September 12th, 1910.

The Court: This matter is called for the purpose of taking the deposition of one of the plaintiffs, who is about to absent himself from the Philippine Islands.

JOAQUIN IBAÑEZ DE ALDECOA, called in his own behalf, being duly sworn in open court, testified as follows:

228 Direct examination by Sr. Chicote:

Q. State you- name?

A. Joaquin Ibañez de Aldecoa.

Q. Where do you reside?

A. In Manila, P. I.

Q. I will show you a document, marked for identification Exhibit "A", to be found in the record of Case No. 6086 of this Court, and will ask you to state whether or not you have seen this document prior to this time?

A. No, sir, I have not seen this document before.

Q. Will you kindly look at the document and see whether or not it is signed by you?

A. Here does not appear my signature but at the foot of this document in typewriting there is Joaquin Ibañez de Aldecoa.

Q. Do you remember having signed any document in which some of your participation in the property at Malate was mortgaged to the Hongkong and Shanghai Banking Corporation?

A. No, sir, but I heard that my mother had made such documents mortgaging her share as well as our shares.

Q. I will show you another document, marked for identification Exhibit "L", which appears in the same record No. 6086 of this Court, and will ask you to state whether or not you have ever
229 seen it prior to this date, and whether you have signed the same?

A. I have not heard anything about this document Exhibit "L".

Q. Did you sign this document Exhibit "L"?

A. I will answer the same as I did in the case of Exhibit "A", I did not sign this, but there is typewritten at the foot of it the signature "Joaquin Ibañez de Aldecoa". I do not know whether I signed the document, or not, I might have signed the document in some other place, but as to becoming familiar with the contents of the document I certainly did not.

Q. Did you sign any document by virtue of which the Hongkong and Shanghai Banking Corporation has given a bond in favor of Aldecoa and Company, as the result of certain litigation against Alexander S. Macleod?

A. I heard something of that kind talked of in the house, but I don't know whether I signed that document or not: I signed documents without knowing what they were, because they simply asked me to sign, and I signed after the signature of my brother in law on the same, signing as agent of my mother and of my sister; but they never read the documents to me, and I never ascertained what their contents were.

230 Sr. Chicote: That is all.

Cross-examination by Mr. Cohn:

Q. Do you mean to state, Sr. Aldecoa, that the original of the document, of which Exhibit "A," in this case is a copy, has not been signed by you?

A. As I have already stated I might have signed some document, but I will also state that the contents of the document were never read to me, and for that reason I cannot tell whether or not that document, Exhibit "A," has been signed by me, but if it is signed by me my signature will appear, although that has nothing to do with my having read the document.

Q. And in regard to the document dated June 13th, marked Exhibit "L," have you signed the original of that document, or not?

A. I will have to repeat the same answer I made before, that I might have signed it, but if I signed it my signature will appear on the document, but as to having known its contents I did not, because when working with the house of Aldecoa and Company they considered me there as a prodigal, though they gave me some consideration, but they never explained to me the contents of the document or what it was done for, they only told me to do it, and then after my
231 signature was there it would happen that Aldecoa and Company, or my brother in law, or Mr. Urquhart who was representing Aldecoa and Company, who might be said to be in charge of the concern, head of the concern, would say for instance: "This afternoon we have to sign a document," and when I would ask about what the document would be that I was going to sign they would answer, "if it was anything prejudicial to you we would not ask you to sign," and as a matter of fact my brother in law would say: "I have to sign myself as agent of your mother and sister, and for that reason I do not believe you will have any objection whatsoever in signing, and upon seeing my signature you will sign." Then when I would ask

for further explanation about it he would say: "We will talk about it later on, we have something else to do just now."

Q. Please look at Exhibit "D-5" in this case, and state whether or not you ever signed the original of which the letter is a copy?

A. I know the contents of this document.

Q. Did you sign the original of which this is a copy?

A. I believe I did, because I see here "Joaquin Ibanez de Aldecoa" as my signature, but I would not state positively that I signed
232 it unless I saw my signature in my own handwriting, of course I would know my own handwriting.

Mr. —: That is all.

Supplementary Examination of the Same Witness.

Examination by Mr. Cohn:

Q. Have you not since the closing of this deposition, and while still in the confines of the court-house, stated that I was present in the office of the Hongkong and Shanghai Banking Corporation when you signed the escritura, a copy of which is Exhibit "A" in this case?

A. I did not say anything like that, the only thing I said to Mr. Cohn, if your Honor will permit I will repeat, which was this: "In order to show that nothing was ever read to me, and that I did not become familiar with the contents of the documents which I signed. I will state that I signed myself an escritura declaring myself to be a prodigal, and if I have not a bad memory it seems to me that on certain occasions when I signed escrituras there in the office of the Hongkong and Shanghai Banking Corporation, I went there together with my brother in law and Sr. Urquhart, and that you were present and can testify that I never became familiar with the contents of what I signed, and that the escritura was not read to me
233 there, and probably five minutes before going to the office of the bank I did not know even that I had to sign anything."

I have never told Mr. Cohn about Exhibit "A," or "L," because this is the first time I have heard that there was an Exhibit "A," or and Exhibit "L," and I certainly could not have explained to Mr. Cohn in regard to things I had no knowledge of. The only thing I called the attention of Mr. Cohn to was to calling him as a witness to testify that there was never read to me anything before I signed, or when asking me to sign.

Q. Is it not a fact that you also stated to me that I could be a witness to the fact that I had not read to you the escritura Exhibit "A" at the time you signed it at the office of the Hongkong and Shanghai Banking Corporation?

A. I stated to Mr. Cohn that if he was there at the office of the Hongkong and Shanghai Banking Corporation at the time I signed the escritura Exhibit "A" he would know that the escritura was not read at all to me, but that if Mr. Cohn was not present at that time there I did not know that he could be a witness to that effect; but that if he was there he must know that the escritura was not read to me.

234

Mr. Cohn: That is all.
Sr. Chicote: I have no question to ask.

I certify that the above is a correct transcript of shorthand notes taken by me of the proceedings in the above entitled case in the Court of First Instance for the City of Manila, on the 21st day of September, 1910.

(Signed)

WM. M. BARRINGTON,
Official Reporter.

235

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila, Part II.

Civil Case. No. 6086.

JOAQUIN IBAÑEZ DE ALDECOA et al.
against

ALDECOA & COMPANY, HONGKONG AND SHANGHAI BANKING
CORPORATION et —.

Memorandum for Mr. Cohn.

Sept. 12th, 1910.

Mr. Cohn: Upon leaving the court-room after the close of the principal deposition of Mr. Joaquin Ibañez de Aldecoa, he approached me with the statement that on a certain occasion in the office of Mr. Rosado he had signed himself a petition that he be declared a prodigal. I thereupon replied that I did not know or care anything about that, but that if that were true it was the most sensible thing he had ever done in his lifetime. He thereupon said to me: "To show I do not know what I am doing when I sign, you yourself were present in the Hongkong Bank when this contract was signed, and you can swear as a witness yourself that you failed to read it to me: "Whereupon I hailed Sr. Chicote, attorney for the plaintiff in this case, and requested him to return to the court-room for the purpose of making this conversation a part of the record.

236

I certify that the above is a correct transcript of shorthand notes taken by me of the statement made by Mr. Charles C. Cohn at the close of the proceedings in the above entitled matter, on September 12th, 1910.

(Signed)

WM. M. BARRINGTON,
Official Reporter.

237

The new hearing in this case took place on the 24th day of January, 1911, at 2 p. m., the record of said hearing being as follows:

(Title of the Case Omitted.)

Hearing had before the Honorable A. S. Crossfield, Judge of the Court of First Instance for the District of Manila, on the twenty-fourth day of January, 1911.

Appearances: Mr. Alfredo Chicote, Attorney at Law for plaintiffs.
Mr. Charles C. Cohn, Attorney at Law, for the defendant Hongkong and Shanghai Banking Corporation.

Mr. Cohn: I offer in evidence Exhibit marked "A."

It is stipulated by the attorneys appearing, that the document, appearing in the record marked Exhibit "L" is an exact copy of the instrument of the 13th of June, now offered and introduced in evidence with the exception that the original instruments attached as a part thereof a printed copy of the mortgage of February 23th, 1906 and that the copy may be left in the record in place and instead of the original.

That is all.

Case closed.

I hereby certify that the foregoing two pages of typewritten matter is a full and correct transcript of notes taken by me of the proceedings held in the above entitled cause on the date set out at the beginning of this transcript.

(Signed)

H. V. BRAMBERGER,

Stenographer, Court of First Instance.

After the rehearing of said case in the manner above stated, the Court, on January 27, 1911, rendered the following decision:

238

(Title of the Case Omitted.)

Decision.

This case is before the Court for trial upon an amended complaint by the plaintiffs to have a document, or instrument of mortgage, executed by the plaintiffs and the defendants on the twenty-third day of February, 1906 to secure the payment of an account current between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, declared null and void in so far as plaintiffs are concerned and the plaintiffs relieved from responsibility on account thereof, on the ground that at the time of the execution of said instrument or mortgage the plaintiffs were minors and incompetent to make and execute the same.

The defendant Aldecoa and Company answered admitting part of the allegations of the complaint, and set up as a special defense that the plaintiffs were minors but more than eighteen years of age, and that they had been emancipated by their mother the defendant Isabel Palet Gabarro, and that they voluntarily mortgaged some of their property for the purpose of securing payment of an account

current between the defendant Aldecoa and Company, and the defendant Hongkong and Shanghai Banking Corporation.

239 The defendant Isabel Palet Gabarro answered setting forth the fact that she had emancipated the plaintiffs, her children, after they were eighteen years of age, supposing that she had authority to do so, and that she had consented to their executing the mortgage upon their property to secure an account current between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, supposing she had power to authorize it by giving consent, but that she was in error, and asked that they be relieved from the responsibility incurred by them in the execution of the document.

Señor Alfredo Chicote appeared in behalf of the plaintiffs; Señor Antonio Sanz for the defendant Aldecoa and Company; Señor Maximino Mina for the defendant Isabel Palet Gabarro; and Mr. Charles C. Cohn for the defendant Hongkong and Shanghai Banking Corporation.

The case was once before tried and judgment entered. A new trial was granted upon the allegation of newly discovered evidence on the part of the defendant Hongkong and Shanghai Banking Corporation. The evidence submitted at the first trial is all resubmitted and the only additional evidence submitted by any one was a memorandum of agreement executed by the plaintiffs and the defendant Isabel Palet Gabarro and the defendant Aldecoa and Company.

240 From all the evidence thus presented at the second trial I find that the plaintiff Zoilo Ibañez de Aldecoa y Palet at the time of the commencement of this action was a minor duly represented by his guardian ad litem, Vicente Miranda, and the plaintiff Joaquín Ibañez de Aldecoa is of lawful age and appears in his own behalf.

That the defendant Aldecoa and Company, in liquidation, is a sociedad colectiva mercantil, and duly registered in the mercantile registry, and that William Urquhart, is the liquidator;

That the defendant Isabel Palet Gabarro is one of the capitalistic partners of the defendant firm Aldecoa and Company;

That the defendant Hongkong and Shanghai Banking Corporation is a corporation duly organized and doing business in the City of Manila, and properly registered;

That on the thirty-first day of December, 1896, the plaintiffs, according to a public document, became industrial partners in the aforementioned partnership of Aldecoa and Company, and they so continued until the document was declared null and void by this Court, in so far as plaintiffs were concerned, by judgment ordered September fifth, 1908;

241 That on the 31st day of July, 1903, Isabel Palet Gabarro mother of the plaintiffs, their father being dead, by public document executed before a notary public in Manila, emancipated each of the plaintiffs, they each then being more than eighteen years of age;

That on the twenty-third day of February, 1906, the defendant

Aldecoa and Company, were debtors in a large amount upon an account current with the defendant Hongkong and Shanghai Banking Corporation, and was threatened by the bank with proceedings to collect the amount due, which would have been the destruction of its business, unless payment of the debit of the account was secured in some way, and that thereupon the plaintiffs, believing that they were industrial partners in the firm of Aldecoa and Company, and being anxious to protect the good name of their father and preserve the name of the company, at the head of which their father had for a long time been, and in consideration of the indebtedness of Aldecoa and Company before mentioned and of certain agreements made on the part of the defendant bank and the defendant Aldecoa and Company, joined in executing a document with the defendants, whereby they with their mother, through her attorney, Fernando Zobel, mortgaged their undivided interests in certain real property to secure payment of said indebtedness;

That when this document was executed the plaintiffs exercised the emancipation which had been conceded them by their mother, as hereinbefore stated, and executed the document with her consent.

242 It must be concluded that the mortgage was executed with her consent, because in the document, Exhibit "F," in which she authorized Fernando Zobel to act for her, she authorized him to execute the mortgage in question in conjunction with her sons, the plaintiffs, and they otherwise had her consent, though objection was made in the first place to the making of the mortgage.

The mortgage was duly executed, the consideration existed, the plaintiffs were duly emancipated under the provisions of the Civil Code, and they had the consent of their mother, in the absence of their father, to execute the mortgage.

That on the thirteenth day of June, 1907, the plaintiffs, together with their mother, Doña Isabel Palet Gabarro, as parties of the first part, entered into a memorandum of agreement with the defendant Aldecoa and Company in liquidation, as party of the second part, and the Hongkong and Shanghai Banking Corporation as party of the third part, in which it was agreed by the party of the first part and of the second part that in case the party of the third part gave bond in a case then pending, in which the party of the second part had interest, that the proceeds of such judgment should be applied upon the account existing between the defendant Aldecoa and Company, and the defendant Hongkong and Shanghai Banking Corporation, and that if the Hongkong and Shanghai

243 Banking Corporation should incur any loss on account of the obligation, that the defendant Aldecoa and Company would indemnify them for such loss and it should be added to the amount which the said Aldecoa and Company already owed said bank and that the payment of it should be guaranteed by the same mortgage executed on the 23rd day of February, 1906, hereinbefore described;

That at the date of the execution of this memorandum of June

13, 1907, the plaintiff Joaquin Ibañez de Aldecoa had become of adult age.

The only questions for determination are: Did the mother of the plaintiffs have power at law to emancipate her children, the plaintiffs, so that they could freely dispose of or mortgage their real property, having her consent so to do?

Under the laws in force in the Philippine Islands at the time the documents of emancipation, hereinbefore referred to, were executed, the father, or in case of his death or disqualification, the mother of a minor child, is the natural guardian of the child and is entitled to its custody, but not of its estate, unless it is so ordered by the Court. (See section 553 of Act 190.)

Clearly, then, the mother, being the natural guardian of the plaintiffs, but not having the legal custody of their estate, for it nowhere appears that the Court has ordered their estate into
244 her custody, or in any way subrogated it to her control might emancipate the plaintiffs from her personal custody, but could not authorize them while minors to dispose of or mortgage their real estate, without the sanction of the Court.

The document executed by the plaintiffs on the twenty-third day of February, 1906, whereby they mortgaged certain of their real property to the defendant bank, was without authority in so far as these plaintiffs are concerned, and the plaintiffs are entitled to have it declared null and void as to them, and the registry of it as to them and their interest in the real estate described therein cancelled, if the plaintiff Joaquin Ibañez de Aldecoa, after becoming of age, had not ratified the mortgage made on the twenty-third day of February, 1906, by recognizing it as being in existence on the thirteenth day of June, 1907, after he had become of adult age.

The plaintiff Zoilo Ibañez de Aldecoa y Palet is entitled to have the mortgage declared null and void as to him and the registry of it as to him and his interest in the real estate described therein cancelled.

Let judgment be entered dismissing the complaint in so far as the plaintiff Joaquin Ibañez de Aldecoa y Palet and in favor of the
245 plaintiff Zoilo Ibañez Aldecoa y Palet and against the defendants Aldecoa and Company, in liquidation, Isabel Palet Gabarro, widow of Ibañez de Aldecoa, and the Hongkong and Shanghai Banking Corporation, declaring the document made and executed by the plaintiffs with the defendants on the twenty-third day of February, 1906, whereby plaintiffs mortgaged certain undivided interests which they had in real estate to secure the payment of the current account existing between the defendant, Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, to be null and void as to this plaintiff Zoilo Ibañez de Aldecoa and the registry thereof in the registry of property, so far as this plaintiff is concerned be cancelled.

No costs will be taxed.

A. S. CROSSFIELD, *Judge*.

On this 30th day of January, 1911, notices of the above decision have been sent to the attorneys Chicote and Haussermann and to the Registrar of the property.

(Signed)

M. P. JURADO,
Acting Deputy Clerk.

246

(Title of the Case Omitted.)

Now comes the Hongkong and Shanghai Banking Corporation through its undersigned attorneys in the above entitled case and files its exception against the decision rendered by this Court in said case on the 24th day of January, 1911, and asks that this exception be duly recorded in the Registry of this Court.

Manila, P. I., January 31, 1911.

HAUSSERMAN, COHN &
FISHER,

(Signed)

p. p. CHARLES C. COHN,
*Attorneys for the Defendant the Hongkong & Shanghai
Banking Corporation.*

Stamped: Filed this 31st of January, 1911, at 4:30 p. m.
(Signed) M. P. Jurado, Acting Deputy Clerk.

(Title of the Case Omitted.)

Messrs. Chicote and Miranda. Attorneys for the Plaintiffs, and Don Antonio Sanz, Attorney for Aldecoa & Company in Liquidation, and Don Maximino Mina, Attorney for Doña Isabel Palet y Gabarro:

Please take notice that next Saturday, February 4, 1911, at 8 a. m. or as soon thereafter as this counsel can be heard and this motion called for hearing, we shall ask this Honorable Court to set aside and annul the decision rendered in this case on January 27, 1911, and shall ask for a new trial of the above entitled case for the following reasons:

- 247 1. Because the evidence does not sufficiently justify the decision of the Court.
2. Because said decision is contrary to law.
3. Because the findings of fact made in said decision are openly and manifestly against the weight of the evidence.

Manila, P. I., January 31, 1911.

HAUSSERMAN, COHN AND
FISHER,

(Signed)

p. p. CHARLES C. COHN,
*Attorneys for the Defendant, The Hongkong and
Shanghai Banking Corporation.*

Received copy this 31st day of January, 1911.

CHICOTE AND MIRANDA,
Attorneys for Plaintiffs.

SANZ & OPISSO,
*Attorneys for Defendant Aldecoa and Company,
in Liquidation.*

MAXIMINO MINA,
Attorney for the Defendant Isabel Palet y Gabarro.

Stamped: Filed on the 31st of January, 1911, at 4:30 p. m.
(Signed) M. P. Jurado, Acting Deputy Clerk.

(Title of the Case Omitted.)

Now comes counsel for plaintiff Joaquin Ibañez de Aldecoa in the above entitled case, and excepts to the decision rendered in this case dismissing the complaint as to Joaquin Ibañez de Aldecoa, and asks that this exception be duly recorded for the legal effects thereof.

Manila, February 1st., 1911.

(Signed) CHICOTE AND MIRANDA,
Attorneys for Plaintiff, Joaquín Ibañez de Aldecoa.

Stamped: Filed this 2nd of February, 1911, at 11:10 a. m.
(Signed) M. P. Jurado, Acting Deputy Clerk.

Received copy:

(Signed) HAUSSERMANN, COHN &
FISHER,
p. p. CHARLES C. COHN.

248

(Title of the Case Omitted.)

Now comes counsel for the plaintiff Zoilo Ibañez de Aldecoa and excepts to the decision rendered in this case and asks that a new trial be granted, basing this petition in the fact that the decision of the Court does not find in favor of this plaintiff all the motives by him alleged in the complaint for the nullity of the contract, and that the decision is contrary to the weight of the evidence and is not justified by the same.

Manila, February 1st., 1911.

(Signed) CHICOTE AND MIRANDA,
Attorneys for the Plaintiff Zoilo Ibañez de Aldecoa.

Stamped: Filed on the 2nd of February, 1911, at 11:10 a. m.
(Signed) M. P. Jurado, Acting Deputy Clerk.

(Title of the Case Omitted.)

Now comes counsel for plaintiff Joaquin Ibañez de Alsecoa and asks the Court to annul and set aside the judgment rendered in this

case dismissing the complaint as to Joaquin Ibañez de Aldecoa, and moves for a new trial of this case for the following reasons:

1st. That the decision rendered is contrary to law.

2nd. Because the decision of the Court is not justified by the evidence, and the findings of fact in said judgment are openly and manifestly against the weight of the evidence.

249 Manila, February 1st., 1911.

(Signed) CHICOTE AND MIRANDA,
Attorneys for Plaintiff Joaquin Ibañez de Aldecoa.

Stamped: Filed on the 2nd of February, 1911, at 11:10 a. m.
(Signed) M. P. Jurado, Acting Deputy Clerk.

On the 4th. day of February, 1911, the hearing of the motions for a new trial made by plaintiffs and defendants took place, and were decided by the Court as follows:

(Title of the Case Omitted.)

Order.

This case is before the Court for the hearing of the motions for a new trial filed by plaintiffs and defendant.

Mr. C. C. Cohn appeared on behalf of the defendant The Hongkong and Shanghai Banking Corporation, and no one else appeared for any other of the parties.

It is ordered that both motions for a new trial be denied.

Manila, P. I., February 18, 1911.

(Signed) A. S. CROSSFIELD, *Judge.*

This 20th day of February, 1911, the parties in this case were notified of the above order.

(Signed) JOSE CASIMIRO,
Deputy Clerk.

250

(Title of the Case Omitted.)

Now comes the defendant The Hongkong and Shanghai Banking Corporation through its counsel and excepts to the resolution of this Court of February 18th., 1911, denying the new trial asked for by this defendant; likewise, this defendant announces its intention to file a Bill of Exceptions to carry this case to the Supreme Court of the Philippine Islands.

Manila, P. I., February 21, 1911.

(Sgd.) HAUSSERMANN, COHN AND
FISHER,
p. p. CHARLES C. COHN,
*Attorneys for the Defendant, The Hongkong and
Shanghai Banking Corporation.*

Received copy this 21st of February, 1911.

(Signed)

SANZ AND OPISSO.

Received copy this 21st of February, 1911.

(Signed)

CHICOTE AND MIRANDA.

(Signed)

MACARIO CARANTO.

MAXIMINO MINA.

Stamped: Filed on the 21st of February, 1911, at 4:7 p. m.
(Signed) M. P. Jurado, Acting Deputy Clerk.

(Title of the Case Omitted.)

Now come both plaintiffs and except to the decision of this Court, dated February 18th, 1911, denying the motions for a new trial filed by them, and ask that this exception be duly noted.

251 Plaintiffs also announce their intention to appeal this case to the Supreme Court of the Philippine Islands, through a Bill of Exceptions.

Manila, February 23, 1911.

(Signed)

CHICOTE AND MIRANDA,

Attorneys for Plaintiffs.

Received copy this — day of February, 1911.

(Signed)

HAUSSERMANN, COHN AND

FISHER,

*Attorneys for the Hongkong and
Shanghai Banking Corporation*

Received copy this 23rd of February, 1911.

(Sgd.)

SANZ & OPISSO,

*Attorneys for Aldecoa and
Company in Liquidation.*

Received copy this 24th day of February, 1911.

(Signed)

MAXIMINO MINA,

By ALIPIO APTRILOS.

After due notice and hearing the Court of First Instance of Manila, on March 4, 1911, approved the Bills of Exceptions filed by plaintiffs and by defendant the Hongkong and Shanghai Banking Corporation.

Bill of Exceptions of Plaintiffs Joaquin and Zoilo Ibañez de Aldecoa.

252 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

Civil No. 6086.

JOAQUIN IBANEZ DE ALDECOA Y PALET, Y ZOILO IBANEZ DE ALDECOA
 Y PALET, Plaintiffs,

vs.

ALDECOA Y COMPANIA EN LIQUIDACION, THE HONGKONG & SHANG-
 HAI BANKING CORPORATION, Y D. A ISABEL PALET, Defendants.

Bill of Exceptions.

Be it remembered that in the Court of First Instance of the City of Manila, Part II, the following proceedings took place on the date hereafter mentioned:

1.

On November 17th, 1908, plaintiffs filed the following complaint:

253 (Heading and Title of Case Omitted.)

Amended Complaint.

Now come the plaintiffs and allege:

I.

(a). That they are born in the Philippine Islands, residing at the City of Manila, Joaquin Ibañez de Aldecoa being 23 years of age, and Zoilo Ibañez de Aldecoa 22 years of age, the latter making his appearance with the assistance of his guardian ad litem Don Vicente Miranda y Dyce who has been appointed ad hoc by the Court of First Instance of Manila.

(b). The defendant, "Aldecoa y Compañia en liquidacion" is a general mercantile partnership, (sociedad mercantil regular colectiva), domiciled in Manila, and registered in the Mercantile Registry of this City, being at present in its period of liquidation on account of the expiration of its term of duration, Mr. William Urquhart being the liquidator of the same, having acted and continuing to act as such from the month of January, 1907.

(c). The defendant Isabel Palet y Gabarro is the widow of Don Zoilo Ibañez de Aldecoa, merchant, domiciled in Manila, and residing at present in Madrid, Kingdom of Spain, being the owner of
 254 real property situate in the Philippine Islands, and one of the partners, in fact, the main and most important partner, of the firm "Aldecoa y Compañia en liquidacion."

(d). The defendant The Hongkong and Shanghai Banking Corporation, is a banking corporation duly established and organized, which has been, and continues to be engaged in business in the Philippine Islands, being registered as such Corporation in the corresponding Registry, with its place of business open at Plaza de Cervantes, District of Binondo of this City.

II.

On July 31, 1903, plaintiffs herein, Joaquin and Zoilo Ibañez de Aldecoa, being minors and owners of a large amount of both real and personal property in the Philippine Islands, the defendant Doña Isabel Palet Gabarro mother of said plaintiffs acting in violation of the laws in force in the Philippine Islands, without capacity, authority or permission therefor, by documents ratified on that date before the Notary Public, Don Enrique Barrera y Caldes, Manilla, P. I. stated the following:

That acknowledging in her son (she referred to her sons, Don Joaquin Ibañez de Aldecoa y Palet and Don Zoilo Ibañez de Aldecoa y Palet) the faculty to rule his person and to manage his
255 property, renounces for herself the parental authority (paria potestad) which she heretofore had over his person and property, and by virtue thereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire, just as if he were of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents either public or private which may be necessary for the above named purposes.

Plaintiffs allege that, by virtue of recent information by them acquired, they know now, and so do they believe and allege, that at the time the document above referred to was made and ratified, Doña Isabel Palet Gabarro did not exercise her parental authority nor any other authority or legal representation over them.

III.

On February 23, 1906, plaintiffs and defendants signed a document ratified before the Notary Public of Manila, Don Jose Maria Rosado by which document the plaintiffs, acting on the belief and under the impression that they were members of the firm Aldecoa and Company, executed a mortgage on certain real property owned by them, situated in the City of Manila, to secure the payment of a
256 considerable sum of money amounting to P475,000 which, it was said, the Hongkong & Shanghai Banking Corporation had credited to the current account of the firm of Aldecoa & Company. The terms of said document being such as appear in the said deed, copy of which is attached to this complaint, marked "Exhibit A," and the contents thereof made part hereof as if the same had been inserted in the body of this complaint, so that a better knowledge be had as to the obligation contracted by these plaintiffs.

IV.

Plaintiffs allege that at the time they signed the above mentioned document of February, 23 1906 and gave the mortgage security appearing therein on the real property belonging to them and described in such document, they were minors and were not emancipated nor could they be so legally and validly under the laws in force in the Philippine Islands and they had no guardian of their persons and property and in fact they concurred and intervened in the execution of said document of February 23, 1906 under the erroneous belief that they were partners in the firm of Aldecoa and Company, and without the assistance of a guardian or any other valid and legal representation and without the consent or legal authority required by law even in case they had been emancipated minors.

257

V.

Plaintiffs allege, furthermore, that they were deceitfully induced by Mr. Alejandro S. Macleod, as manager of Aldecoa and Company, and by Mr. Harris Davies Campbell Jones, as manager of the Hongkong and Shanghai Banking Corporation, each by himself and each in collusion with the other against these plaintiffs, in order that these plaintiffs should, as in fact they did, intervene, mortgaging their real property described in "Exhibit A" to the prejudice of these plaintiffs and to the benefit of the defendants and each one of them who, as these plaintiffs are now informed, deceitfully, knowingly and untruthfully, in order to induce these plaintiffs to sign that document abusing of their inexperience, made to these plaintiffs the following false, cunning and deceitful statements and representations:

(a). That these plaintiffs were legally and validly emancipated and that these plaintiffs were partners in the firm of Aldecoa and Company.

(b). That Doña Isabel Palet, mother of these plaintiffs ordered them to intervene and execute the said document jointly with her, who would do the same through her attorney Don Fernando Zobel.

(c). That the purpose of said document was directed only to save the name and commercial reputation of the father of these plaintiffs.

(d). That by said document it was sought to secure a debt contracted by the father of these plaintiffs and it was also in part
258 directed to obtain money from the Hongkong & Shanghai Banking Corporation for Aldecoa & Company in which firm these plaintiffs were industrial partners.

(e). That such document as regards these plaintiffs and Doña Isabel Palet was merely a nominal guarantee without any effect, for the reason of Aldecoa & Company was the only debtor, the same being quite solvent.

All of which statements and representations, according to a later and recent information acquired by these plaintiffs, who so believe and do allege, were and are false and deceitful, and directed only to induce these plaintiffs to error, making them consent and su-scribe that document.

VI.

Furthermore, plaintiffs allege: that the said document of February 23, 1903, contains as regards these plaintiffs and in general, a false consideration, inasmuch as it is not true, as in the above referred document is said, that these plaintiffs are partners in the firm of Aldecoa & Company, or that the defendant, the Hongkong & Shanghai Banking Corporation had ceded or opened any credit in favor of the defendant Aldecoa & Company; and these plaintiffs know now and so do they allege, that such document is only an acknowledgment made by Aldecoa & Company of its indebtedness to the
259 Hongkong and Shanghai Banking Corporation for the sum P475,000, as an amount liquidated and payable at that time, and by concealing this fact, they did thereby make these plaintiffs believe that the purpose of such document was to grant a new credit to Aldecoa & Company, of which company the defendants made plaintiffs believe that they were members, and that if the mortgage was not executed, plaintiffs would lose all their property as collective or general members thereof.

VII.

These plaintiffs also allege that there was no consideration whatever for them to execute the above said document; that at the time when they were deceitfully induced to execute the same, as above said, Aldecoa & Company was, as it is at the present time, insolvent, and the time for its dissolution being near at hand, its term of duration being about to expire, and it was in fact dissolved by operation of law on account of loss of its capital; and at such time, as it is already stated, these plaintiffs were minors and were not or could — be legally and validly emancipated, nor legally or validly represented, and this fact was well known by the managers of Aldecoa & Company and by the manager of the Hongkong & Shanghai Banking Corporation; and likewise, the defendants herein, through
260 their agents, well knew that the consent which these plaintiffs gave in the above said document had been given under the erroneous belief that they were members of Aldecoa & Company and that said consent was null and void and the authority and consent which in said document their mother Doña Isabel Palet is said to give them through her attorney in fact Don Fernando Zobel, was an unlawful act, in violation of the laws in force; and said defendants through their agents also well knew, but deceitfully concealed it from these plaintiffs, that the supposed membership of these plaintiffs as partners in said firm and the supposed emancipation of these plaintiffs therein alleged, and the alleged consent of their mother, were and are false, fraudulent and against the laws, and were made use of by the defendants deceitfully to derive for themselves the benefit of the security given by these plaintiffs and cause them damage by reason of the insolvency and dissolution of the firm of Aldecoa and Company, which insolvency and dissolution were known to the defendants and said defendants concealed these

facts from plaintiffs so that the frauds committed against the partners of Aldecoa & Company and in the private property of Doña Isabel Palet and of these plaintiffs and their sister Doña Cecilia Ibañez de Aldecoa, should not be discovered, said frauds being committed by the managing partners of Aldecoa and Company
 261 and especially by Mr. Alejandro S. Macleod, all of them being great friends of Mr. Harris Davies Campbell Jones, Manager of the Hongkong and Shanghai Banking Corporation who was not ignorant of some of the frauds committed.

Wherefore, plaintiffs ask that judgment be rendered in their favor and against the defendants:

(a). Finding and decreeing that the appearance and execution by these plaintiffs of the contract of February 23, 1906, which is attached hereto, marked "Exhibit A," and made part hereof in whatever pertains hereto, is null and void, unlawful and in violation of the law.

(b). Finding and decreeing that the obligation contracted and the mortgage executed by virtue of said document on the real property belonging to these plaintiffs and described in said "Exhibit A," which is made part hereof in whatever it may pertain hereto, are both to wit: said obligations and said mortgage, null and void and of no effect in regard to these plaintiffs.

(c). Finding and decreeing, by virtue thereof, that these plaintiffs be declared exempt from any obligation and liability, and their property above referred to released from the mortgage executed thereon by virtue of said document dated February 23, 1906.

(d). Granting these plaintiffs whatever other remedy which this Court may deem just and equitable, and the costs of this
 262 suit.

Manila, October —, 1908.

(Signed)

CHICOTE & MIRANDA,
 By ALFREDO CHICOTE,
Attorneys for the Plaintiffs.

The Exhibit "A," to which the amended complaint refers and attached to the original complaint is as follows:

EXHIBIT "A."

Deed of Credit.

Know All By These Presents, that we, Don Joaquin Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31st, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to; Don Zoilo Ibañez

de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, through an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y

263 Caldes, on July 31st, 1904, assisted by and with the consent of my said mother, and by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow of Senor Don Zoilo Ibañez de Aldecoa, by virtue of an instrument ratified and executed before the Notary Public of the Villa y Corte de Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on December 31st, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to legally execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry

264 of this Capital, all of them, parties of the first part; and Mr. Harris Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the "Hongkong & Shanghai Banking Corporation" by virtue of the representation and powers conferred to me by the letter of attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco Asis Caballero y Mediano, Vice-Consul of Spain for the British Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul for the same Colony, and registered on February 26, 1898, at Sheet No. 10, bis, inscription No. 1, Volume 2 of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part, hereby make it known:

I. That Don Joaquin, Don Zoilo, and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in undivided equal shares at the rate of one third each of the following property, to-wit:

A. Urban property. A lot with the camarine of strong materials with roof of galvanized iron built within its area, situated in Calle Jolo of the district and Judicial Section of Binondo and North demarcation of the Registry of the Property of this Capital and designated at present by the Government police No. 6. It is

Fol. 188 vto. Vol. 13, Binondo Section and 48 of the Archive, property No. 111 duplicate, Inscription 8th.

bounded on the right of its entrance by house and lot No. 4 belonging to the heirs of Don Jose Maria Fabie; on the left by house and lot No. 8 of Don Jose Varela y Miciano, and on the back by Binondo River. The whole of the lot occupies a superficial area of 1308 square meters and 23 decimeters, of which 393 square meters and 58 decimeters are covered by the building. This property is registered at folios 181, 185 and 187, Volumes 6 and 48 of the Registry of Property of this Capital; books 3 and 13 of the Section of Binondo, property No. 111, inscription Nos. 5, 6 and 7.

II. That the Excelentisima Señora Doña Isabel Palet y Gabarro, and her children Don Joaquin, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in equal undivided shares, at the rate of one fourth each of the following property, to-wit:

Three buildings joined under the name of "Camarines de la Barraca" the reason for joining them being the fact that they are used as warehouses, the description of which being as follows:

B.—First. Urban property, consisting of a masonry camarine with iron roof, called "La Prensa" because it contains a hemp press, with the lots on which it is built, said property being situated in Calle

266 Barraca of the district of Binondo, designated by police No. 5 and bounded

on the right of its entrance by one of the three properties to wit: that designated with No. 7 of the same street, on the left by a lot without number of Calle Carenero belonging to the Hacienda; its superficial area measures 1875 square meters with 81 square decimeters, of which the building occupies an area of 1553 square meters and 74 square centimeters. This property is registered at folios 70, 72, 73 and 190, Volumes 6 and 48, Book 3 of Section of Binondo, property No. 91, annotations letters C, Ch, and E.

C.—Second. Urban property, consisting of a house and a camarine or bodega which is an accessory thereof, of strong materials with the lot on which they are built, situated in Calle Barraca of the district of Binondo and designated at present with No. 7. It is

267 bounded on the right of its entrance by house and lot No. 9 now belonging to Doña Maria C. Vales y San Juan, formerly of the late Don Vicente Vales, on the left by camarine and lot No. 5

hereinbefore described and on the back by lot without number of Calle Carenero of the Hacienda, its superficial area being 564 square meters and 94 square centimeters, of which the building occupies 499 meters and 69 centimeters. This property is registered at folios 76, 78, 79 and 189, Volumes 6 and 48 Book 3 of Binondo Section, property No. 92, annotations letters C, Ch, and E.

D.—Third. Urban property, consisting of a strong material cam-

Fol. 191 vto. Vol. 13, Section of Binondo and 48 Archive, property No. 92 duplicate, Inscription 7.

Fol. 200, Volume 13 Section Binondo and 48 Archive, property No. 91 duplicate, Inscription 7.

arine built on its own lot, situated in Calle Barraca of the district of Binondo, without police number as yet. It is bounded on the right of its entrance by house No. 5 first described under letter B, on the left also by house No. 5 of the Presses and one the back by lot without number of Calle Carrenero belonging to the Hacienda.

It has a superficial area of 1153 square meters and 26 square centimeters, of which the building occupies 606 square meters and 16 square centimeters. This property is registered at folios 82, 84, 85 and 202, Volumes 6 and 48, Book 3 of Binondo Section, property No. 93, annotations letters C, Ch and E.

268 E. Urban property, consisting of nine houses and their outbuildings of strong materials with the large lot on which they are built situated and fronting, for the effects of this description, on Calle Real of the

suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Huñon and of Don Segundo Javier; on the left by calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8,070 square meters 76 centimeters also square.

III. That the Hongkong & Shanghai Banking Corporation had granted to the firm of Aldecoa and Company a certain credit in current account to attend to its mercantile operations, of which use had been made up to this date, and in order that it may appear in due form, as well as to make clear the conditions stipulated to that effect, we execute the present instrument by virtue of which we solemnly state:

IV. That the Hongkong & Shanghai Banking Corporation shall keep open in favor of the general mercantile partnership Aldecoa and Company a credit in current account up to the sum of 269 Four hundred and seventy-five thousand Pesos (P475,000) Philippine currency, part of which have already been used.

V. That the debtor firm of Aldecoa and Company secures the payment of its credit in favor of the Hongkong & Shanghai Banking Corporation during the whole period of existence of this agreement with all the hemp bought by the firm or sent to the same for sale by its debtors or other persons who may be in similar case, and therefore, the general mercantile partnership of Aldecoa and Company binds itself to deposit with the Hongkong & Shanghai Banking Corporation all the amounts derived from the sales of said product in Manila, said firm, Aldecoa and Company, being, however, authorized to withdraw these deposits by issuing checks against its current account in order to attend, with the amounts so drawn to the development of its business in accordance with the continuation of its credit opened and acknowledged in the present agreement and without

Fol 293 vto. Volume 13, Section Binondo and 48 Archive, property No. 93 duplicate, Inscription 7th.

Fol. 210, Volume 3, Book 8, Malate Section, property No. 384, annotation letter B.

prejudice to the reduction of said credit in the form hereinafter stipulated.

VI. That the debtor Aldecoa and Company binds itself to send to the Hongkong & Shanghai Banking Corporation in Manila, at the end of each month a written notice giving a detailed and complete statement of the quantity of hemp which said company has on hand in Manila and in the provinces.

270 VII. The credit in current account which the Hongkong & Shanghai Banking Corporation has opened in favor of the general mercantile partnership Aldecoa and Company shall continue in force during the term of this agreement, provided, that said debtor company shall continue to make use of said credit through checks issued against the said Bank, with the sole object of applying those funds to the purchase of hemp, rice, and other products related with the object of said partnership, and subject to the obligation on the part of the debtor Aldecoa and Company to reduce its debit down to the sum of Four Hundred and Twenty Five Thousand Pesos (P425,000) on or before December 31, 1906, and to continue reducing said debit balance at the rate of at least Fifty Thousand Pesos (P50,000) per year until said debit balance be reduced to the sum of Two Hundred and Twenty Five Thousand Pesos (P225,000) Philippine Currency, on January 1, 1911, on which event, the creditor Bank reserves to itself the right to enter into new stipulations with the debtor company for the total payment of its debt; provided, that the yearly instalments for the reduction of the capital shall begin to run from the 1st day of January 1906, so that the first Fifty Thousand Pesos (P50,000) Philippine currency shall be paid on December 31, 1906, and so on, until this stipulation is complied with, that is to say, for the sake of clearness:

271 a) Up to and until December 31, 1906 the credit shall be of four hundred and seventy five thousand pesos (P475,000) Philippine Currency.

b) Up to and until December 31, 1907, the credit shall be of four hundred and twenty five thousand pesos (P425,000) Philippine Currency.

c) Up to and until December 31, 1908, the credit shall be of three hundred and seventy five thousand pesos (P375,000) Philippine Currency.

d) Up to and until December 31, 1909, the credit shall be of three hundred and twenty five thousand pesos (P325,000) Philippine currency.

e) Up to and until December 31, 1910, the credit shall be of two hundred and seventy five thousand pesos (P275,000) Philippine Currency.

So that on January 1, 1911, the credit shall not be for a greater sum than two hundred and twenty-five thousand pesos (P225,000) Philippine Currency.

VIII. In the event the debtor company should succeed in reducing the credit existing in its favor in the provinces by full or partial payment to said debtor company by its debtors, the

272 amount which this company might receive for this reason, shall be paid into the Hongkong & Shanghai Banking Cor-

poration on account of its debt, as additional payment, to those agreed upon, in the foregoing clauses.

IX. The said credit in current account shall earn in favor of the creditor Bank a reciprocal interest of seven per cent (7%) to be liquidated and payable at the end of every six months.

X. The firm of Aldecoa and Company guarantees the faithful and exact compliance on its part with all the obligations entered into by virtue of this document with the pledge of sixteen (16) shares of the capital stock of the Banco Español Filipino of this City which it owns, numbered from 2,356 to 2,371 inclusive and 450 shares which it also owns of the capital stock of the Sociedad Anonima "Compañia Maritima" marked with Nos. 51 to 100 inclusive and 301 to 700 also inclusive, said shares being delivered to the Hongkong & Shanghai Banking Corporation for said Bank to keep the same in its possession as a deposit and with the diligence of an honest and reasonable man.

XI. We, Don Fernando Zobel y de Ayala in the name and on behalf of Doña Isabel Palet y Gabarro, Don Joaquín Ibañez de Aldecoa and Don Zoilo Ibañez de Aldecoa, guarantee, furthermore, the exact and faithful compliance with all the obligations contracted by the firm of Aldecoa and Company, with the voluntary special mortgage which we now constitute on the shares or interest which we respectively have in the property above described; the interest which we have on the property described with letter "A" being security for the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five centavos (P13,847.-75) Philippine currency of the principal with the interest thereof; that which is described with the letter "B" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and interest thereof; that described under letter "C" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine currency of the principal and the interest thereof; that described under letter "D" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine currency of the principal and interest thereof; and that described under letter "E" for the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98) Philippine Currency of the principal and the interest thereof; each one of said pieces of property being also responsible in the sum of five hundred pesos (P500) for costs and judicial expenses, the balance of seventy-three thousand and five hundred and ninety-eight pesos and eighteen centavos (P73,598.18) Philippine currency being secured by the shares of stock referred to in the preceeding paragraph and which are given in pledge.

XII. That by common agreement all the contracting parties fix the value of the interest in the mortgaged property as follows, to wit: that in the property described under letter "A" in the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five cen-

tavos (P13,847.75) that in the property described under letter "B" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that in the property described under letter "c" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); and that in the property described under letter "E" in the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98); which respective values shall be the upset price for the first auction which in case of breach of the present obligation must take place in accordance with the existing laws and those which in the future might be promulgated on the premises waiving, therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

275 XIII. It is a stipulated condition that the creditor Bank shall not have the right to ask for the sale of the property above described to reimburse itself with the proceeds thereof of the total amount of the debt of the firm of Aldecoa and Company, until after the term of five (5) years, fixed for the complete payment of the same, shall have expired; being restricted in the meantime to receive from the debtor company the yearly sum of fifty thousand pesos (P50,000) which has been fixed for the partial yearly payment, and which is secured by the shares of stock above enumerated, even if the firm of Aldecoa and Company should enter in its period of liquidation before the expiration of the said five years (5), since to this effect it is stipulated and agreed that the said term of five (5) years shall not be reduced to a lesser period of time for the mere fact that the firm of Aldecoa and Company goes into or places itself in liquidation either by reason of the expiration of the term of partnership or by reason of being convenient to its interests and also whether said liquidation shall be carried privately or in an official or public manner, for all of which the debtor Company is from now empowered, without the term fixed in this document for the payment of its debt, being thereby diminished.

XIV. Mr. Harris Davies Campbell Jones in the name and on behalf of the Hongkong and Shanghai Banking Corporation does accept this document as to each and every part thereof, declaring to have received the sixteen (16) shares of stock of the Banco Español Filipino and the four hundred and fifty (450) shares of stock of the Sociedad Anonima "Compañia "Maritima" to which reference is made in paragraph X of this document, for said Bank which I represent, to preserve and keep the same as a deposit while the present obligation is in force.

XV. Both contracting parties submit themselves to the jurisdiction of the judges and Courts of this Capital for the settlement of all judicial questions which might be raised by reason of the non-compliance of this contract, expressly waiving, therefore, the jurisdiction of the forum of their respective domiciles.

XVI. That both contracting parties bind themselves to execute at any time whatever documents may be necessary to make effective

or to perfect the corresponding rights and obligations which by this document it is intended to acknowledge and establish and which may be necessary for the registration of the mortgages or other obligations herein granted.

In witness whereof, we sign these presents in triplicate, in Manila, this 23rd day of February 1906.

For the HONGKONG AND SHANGHAI
BANKING CORPORATION,

H. D. C. JONES, *Manager*.

277 (Sgd.)

ALDECOA & CO.

(Sgd.)

FERNANDO ZOBEL.

(Sgd.)

ZOILO I. DE ALDECOA.

(Sgd.)

JOAQUIN I. DE ALDECOA.

Signed in the presence of:

(Sgd.) ANTONIO HIDALGO.

(Sgd.) JOSE MA. ROSADO.

UNITED STATES OF AMERICA,

*City of Manila, Island of Luzon,
Philippine Islands, ss:*

In the City of Manila this 23rd day of February, 1906, before me personally appeared Don Joaquin Ibañez de Aldecoa y Palet; Don Zoilo Ibañez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, Don Alejandro Macleod and Mr. Harris Davies Campbell Jones, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Messrs. Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, Fernando Zobel y de Ayala, and Harris Davies Campbell Jones, exhibited to me their respective certificates of cedula Nos. A-1330177, A-1330173, A-133174, and A-1325201, issued by the Collector of Internal Revenue in this City the 25th of January, 25th of January, 25th of January and 10th of January, 1906; Mr. Alejandro Macleod not having done so on account of being exempt from the same being over 60 years of age.

278 In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.) JOSE M. A. ROSADO,

Notary Public.

My commission expires on December 31, 1906.

Filed at 11:35 a. m. on this date according to entry No. 230, page 98, Volume 11 of the Diary. Manila, February 28, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P0.75—No. 1 Ar.

Filed again together with other documents at 9:25 a. m. on this

date, according to entry No. 339, page 144 of Volume 11th of the Diary. Manila, March 31st, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P1.00—No. 2 Sch.

The above document has been registered as to the pieces of property designated under letters B, C, and A, at folios, Volume, Section and File specified at the margin of the inscription of each piece of property, and registration has been suspended in regard to property designated under letter E by reason of the fact that some of
279 the parcels of land which form part of the same do not appear registered in the name of the mortgagors, and instead thereof, and at the instance of the person presenting the document, preventive notation has been made of said suspension, which shall produce the effects provided for by law, at folio 210 of Volume 3rd, Book 8th of Malate, Section, Property Number 384, notation letter D. Manila, April 26, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P111.85—No. 7 Sch.

The term of duration of the effects of the preventive notation letter B, referred to in the preceeding note is extended to one hundred and eighty days, by virtue of the decree issued on the 11th inst. by Hon. S. del Rosario, Judge of the Court of Land Registration of this City. Manila, August 14, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P0.50—No. 8, Sch.

2.

On December 7th defendant Isabel Palet filed the following answer:

280

(Title of the Case Omitted.)

The defendant Isabel Palet y Gabarro widow of Aldecoa, answering the amended complaint, alleges:

That she reproduces all the statements contained in her answer to the original complaint, as if the same were made in this answer.

And she reiterates her petition to this Court that, in consideration of the facts alleged in said amended complaint, the petition made in the same be granted, without, however, finding this defendant liable.

Manila, December 7, 1908.

(Sgd.)

MAXIMINO MINA,
Attorney for the Defendant,
Isabel Palet, Widow of Aldecoa.

The original answer referred to is as follows:

Answer of the Defendant Isabel Palet y Gabarro.

(Title of the Case Omitted.)

Now comes the defendant Doña Isabel Palet y Gabarro, widow of Aldecoa, and in answer to the complaint states:

That she denies generally and specifically the facts alleged in the complaint, in whatever they disagree with the following:

Special Defense.

I. That on July 31st, 1903, plaintiffs being minors, she, as mother of said plaintiffs, after previously having had a consultation
281 with the Managers of Aldecoa and Company and with the Notary who authorized the document to which the complaint refers, executed, as it is stated in the complaint, said document; but she did not know then and does not know at this time, whether or not such an act was legal; and on executing the said document, or letters of emancipation, it was the purpose of this defendant that her children, the plaintiffs herein, should govern their own property and especially what they had in the firm of Aldecoa and Company, of which firm she considered them as members, by reason of the contract of partnership, and this defendant also well knew that they were creditors of that firm.

II. That she, on executing the letters of emancipation in favor of plaintiffs, did so in the belief that she had parental authority over her children, and that it was an act permitted by the laws of the Philippine Islands, not having received any information, during the whole time prior to the date when she received copy of several complaints filed by her children against her, that, from the year 1901, she had no right of parental authority over her children, plaintiffs herein; nor her children had then and for a long time afterwards, enough judgment to manage their property in the Philippine Islands, inasmuch as she is informed now, and she does so believe and allege, that the documents dated on the July 31st, 1903, to which the complaint refers, are not letters of emancipation according to Law.

III. That on or about the last days of the month of November, 1905, this defendant residing then in Madrid, Spain,
282 received a letter from "Aldecoa and Company" written and signed by Mr. Alexander S. Macleod, Managing partners of said firm, which letter reads as follows:

MANILA, October 18, 1905.

Mrs. Isabel Palet, Widow of Aldecoa, Madrid.

DEAR MADAM: We regret hereby to inform you as to the condition in which the matter of the Hongkong and Shanghai Banking Corporation with this firm is at the present time, it being necessary and indispensable to take a definite resolution on account of the urgency

of the case, since if we do not take a prompt resolution you, as well as this firm and the rest of the partners, would have to suffer fatal consequences.

Our good friend and relative, Don Fernando Zobel has been advising you often and in detail about this matter and its different aspects and for that reason we have not done so, since doubtless he, with more details and means of persuasion than we can have, has written you; but so far, up to the present, we have not been fortunate enough to find an echo in you to bring this matter to a settlement.

We enclose herewith a duplicate copy of the letter of said
283 Bank under the seal of the same, in English, dated the 7th of this month, together with its translation in Spanish, and by reading it, you will see that the proposition which that gentleman sent to Hongkong (of which Mr. Zobel has told us he has advised you), has been rejected, and on the other hand said Bank demands the payment of the total amount of the debt on or before December 31, 1905, that is to say, of this year, but in order to avoid any injury to the firm it would be ready to leave the debt standing, provided it were duly secured with the mortgage of the private property of the partners in the Philippines, and up to the necessary amount to cover the security for the value of the loan or credit of the bank. We beg to call your attention to the fact that the bank demands in the first place the full payment of the total amount owed by this firm and only in the second place it would accept the mortgage of the property to the bank so as to let the firm continue its business without demanding in that case the total payment of the debt for the last day of this year.

We also enclose herewith the original letter and its translation into Spanish (which we received three days ago) written by Messrs. Coudert Bros. attorneys for the Bank on the 9th of the present month, by which you will see that they act under orders received, and as formal confirmation of that which was addressed to us by Mr.

284 Jones on the 7th of the present month, in which letter said attorneys tell us that the firm must pay the full amount of its debt up to December 31st of the present year, or else secure that debt in the manner stated by the Hongkong Bank and to the satisfaction of said bank. We have spoken with the manager of the Hongkong Bank as to the manner and conditions in which the liquidation of the firm could be made in case that the partners thereof should chose to go into liquidation and he answered us that the liquidation would be slow and without intervention from the bank, provided, of course, that the bank should be secured with the private property of the partners in the manner already stated, since, if this is not done, the liquidation would be made through the Courts and both the attorneys of the bank as well as the intervenor, would intervene and the liquidation would proceed under one or several receivers.

Inasmuch as, whether the firm continues doing business freely, or goes into liquidation without the intervention of the bank, the partners of the firm must offer their private property in the Philippines as security, we believe that this condition must be accepted in order to avoid the great prejudice which would be caused by a

judicial liquidation which would bring greater losses than liquidating slowly without the intervention of the bank.

285 As you will see from the letter of the Director of the Bank of the 7th of this month, should the firm continue, (giving, of course, the above named security), the bank could not foreclose the mortgages for a period of five years, unless the firm should go into liquidation and then only as a last resort. There would also be left the obligation to pay the yearly sum of P50,000.00 in order to reduce the amount of the debt. For your knowledge we must tell you that on closing up our Cash Book to-day, the balance we owe to the bank amounts to P423,813.29, and from the month of July our debt has not exceeded P500,000.00 which was the maximum amount fixed for the 31st of December of this year, since the limit of P450,000.00 has been fixed for December 31st, 1903, so that we can tell you now off hand that we are within the terms of our obligation for the year 1905; and although at this moment the balance is in fact too small, due to a considerably large deposit made in said Bank, and it must come up to a larger sum, yet we shall do all in our power to keep within the limit of P500,000.00 thus complying with our side of the agreement.

We beg you to consider that within the term of five years which the bank gives us (should the security be given) there is plenty of time to reduce the balance within that term and, perhaps, to have the total amount of our debt fully paid, to which end we shall
286 devote all our energies.

We also advise you of the fact that we are doing all in our power to have our consignors from the provinces reduce their debts and we are succeeding gradually, and as a proof of it, there is the reduction of our debt to the bank which, having reached at the middle of this year the amount of P550,000.00 and at one time P560,000.00—we do not exceed now by far the sum of P500,000.00.

In consequence of all we have said, we believe that your coming to this country is necessary, and the sooner the better, accompanied, at all events, by some person who may sustain your ideas and keep you advised in order to discuss the matter here and adopt the resolution which you may deem most convenient to your interest as well as to the interest of this firm; should *do* you not be able to come personally to this country accompanied by a person of your confidence, we believe that you must send that person immediately with full power of attorney, since it would be regrettable that disaster should befall us for not coming on time and that you should repent later for not having done so. We understand that we must discuss immediately what resolution are we to adopt in this matter,

287 having in mind, of course, the good name of this firm, its interests and the interest of all its members, and we are of the opinion that the matter must be discussed here, with all the data and information in sight, since the mere interchange of correspondence at this moment we consider it suicide, inasmuch as the Bank gives us a very short term, which we might try to have it extended by reason of the call we make on you to come or to send a person of your confidence with full power. It would, really, be a pity that in the

end they should take possession of the property which it is now refused to give as security.

Expecting your prompt resolution and asking you to send us a telegram advising us whether you are coming personally or sending us a person of your confidence, we beg to remain,

Yours very sincerely,

ALDECOA & COMPANY,
By MACLEOD.

IV. That in view of such letter, and fearing to see herself totally ruined and to see her children in the same condition: without being aware then that her said children were not general (colectivos) partners, and not even partners, of Aldecoa & Company and that the property of the plaintiffs in this case could not, therefore, as it is said in the above transcribed letter, go to the bank, not even the

288 property of this defendant: being ignorant of the real condition of the affairs of Aldecoa & Company and frightened

by the contents of said letter and by the date fatally fixed in the same. (December 31st, 1905), she went to her usual Notary in Madrid, Don Jose Criado, who, in view of the said letter and of the references given by this defendant, extended a special power of attorney in favor of Don Fernando Zobel, which power of attorney to which the complaint seems to refer was signed by this defendant on December 13 of that same year, and by which Don Fernando Zobel, representing this defendant and assisting her children, plaintiffs herein, executed in Manila the document dated February 23, 1906 referred to in paragraph II of the complaint.

V. That the consent given by her to her children, plaintiffs herein, to mortgage their property, was an act done by this defendant without reflection, and was given by her, under error, by reason of the circumstances above given, to-wit:

(a). That she then believed that her children were general partners in the firm of Aldecoa and Company as stated in the said document of December 13, 1905.

(b). That there was imminent danger that the Hongkong and Shanghai Banking Corporation of Manila, creditor of Aldecoa and Company should take possession of all the property of her said children: and

(c). That her said children, plaintiffs herein, were legally emancipated and she could give them her consent.

289 VI. That acting under such errors she instructed her attorney in fact, Mr. Zobel, to advise her children, plaintiffs

herein, by all means to accept the mortgage on their own property, to do honor to their father's "name", and do it in interest of this defendant and the other partners of Aldecoa and Company and in the interest of the good name and credit of the firm.

VII. That if this defendant should have known at such time that by the contract, of February 23, 1906, "the then manager of Aldecoa & Company, Mr. Alexander S. Macleod, sought to conceal from the partners of Aldecoa & Company, and more especially from this defendant, frauds committed by him and his co-managers in the ad-

ministration of Aldecoa & Company and in the private property of this defendant", as alleged by plaintiffs; if she had known that the statements contained in the above copied letter were exaggerated and cunning; if she had known that her children were not then partners in the firm of Aldecoa & Company and that their property did not run any risk of disappearing or of ruin; and if this defendant had known that it was not necessary or legal that her children, plaintiffs herein, should encumber their property, as it has been done, in that case this defendant would not have acted as she did through the instrument of December 13, 1905, nor would she have consented that her children should mortgage and encumber their property in the manner it has been done by the document of February 23, 1906, referred to in the complaint.

290 The defendant asks this Court that, considering the statements herein made, the remedy asked for in the complaint be granted without thereby holding this defendant liable.

Manila, July 6, 1908.

(Sgd.)

MAXIMINO MINA,

Attorney for Doña Isabel Palet Viuda de Aldecoa.

3.

The Defendant Hongkong & Shanghai Banking Corporation, on the 3rd day of May, 1909, filed the following answer:

(Title of the Case Omitted.)

Now comes the defendant the Hongkong and Shanghai Banking Corporation and answering to plaintiffs' complaint, alleges:

That said defendant denies generally and specifically each and every one of the allegations contained in the above said complaint, and the whole of the same.

Therefore, the defendant Hongkong and Shanghai Banking Corporation asks this Court to dismiss the complaint with the costs against the plaintiffs.

(Sgd.) p. p. CHARLES C. COHN,

*Attorneys for the Defendant Hongkong and
Shanghai Banking Corporation.*

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4.

On August 9, 1909, the defendant Aldecoa & Company in liquidation filed the following answer:

(Title of the Case Omitted.)

Defendant Aldecoa & Company, in liquidation answering the complaint filed by plaintiffs in this case on November 17, 1908, state:

That they give the same answer as that which have been filed

in this case on April 18, 1908, which answer they hereby reproduce as if it were fully contained herein.

Manila, August 7, 1909.

(Sgd.)

ROSADO, SANZ & OPISSO,
Attorneys at Law, Plaza del P. Moraga No. 20, Manila.

The original answer referred to is as follows:

(Title of the Case Omitted.)

Now comes defendant Aldecoa & Company in liquidation, and answering plaintiffs' complaint alleges:

I.

That it admits the allegations contained in paragraph I, clauses (a), (b), (c), and (d) of the complaint.

II.

Admits paragraph III of the complaint.

292

III.

Denies generally and specifically each and every one of the allegations contained in paragraph II, IV, V, VI and VII of the complaint, with the exception of those facts expressly admitted in this answer as true.

As a special defense, defendant Aldecoa and Company in liquidation alleges.

I.

That plaintiffs Zoilo and Joaquin Ibañez de Aldecoa, were on and before the 23rd of February 1903, minors, but that by reason of being over 18 years of age, they were emancipated by a voluntary concession of their mother, Doña Isabel Palet y Gabarro widow of the late Don Zoilo Ibañez de Aldecoa y Aguirre, (who was legally authorized to do so), by virtue of the instruments ratified before a Notary Public on July 31, 1903, copies of which are attached to this answer and made part hereof, marked Exhibits "A" and "B."

II.

That on February 23, 1906, plaintiffs who were emancipated by voluntary concession of their mother, as above stated, and defendants, executed a contract ratified and signed before the Notary Public of this City Don Jose Maria Rosado, by which plaintiffs

293 mortgaged certain real property of their own situated in the City of Manila, to secure the payment of a credit on account current which, up to the sum of four hundred and seventy five thou-

sand pesos Philippine Currency (P475,000), the defendant, the Hongkong and Shanghai Banking Corporation, had opened and bound itself to keep open in favor of the defendant Aldecoa and Company, part of which amount had been made use of by said Aldecoa and Company; the terms of said contract and the property mortgaged being the same which appear and are described in the above said document which is attached to the original complaint of plaintiffs, marked Exhibit "A," and made part thereof; which contract, marked Exhibit "A" of the original complaint, is made part of this answer as if the same were attached hereto.

III.

That plaintiffs, at the time of executing the mortgages mentioned in the preceeding paragraph, being as they were, emancipated by voluntary concession of their mother, as aforesaid, acted with the consent of their mother by virtue of the document executed by the latter, copy of which is attached to this answer and made part hereof, marked Exhibit C.

Wherefore, defendant Aldecoa and Company in liquidation asks this Court to dismiss the complaint with the costs against the plaintiffs; and that this Court shall grant it whatever other remedy may be deemed just and equitable.

Manila, April 18, 1908.

(Sgd.)

ROSADO, SANZ AND OPISSO,
*Attorneys for Defendant Aldecoa
and Company in Liquidation.*

5.

The hearing of this case took place on July 21, 1909, at which time the parties offered their evidence respectively, the deposition of the defendant Joaquin Ibañez de Aldecoa taken on May 21, 1908 at the request of the defendant, the Hongkong and Shanghai Banking Corporation, having also been offered in evidence, the Court, on March 28, 1910 rendered the following:

Decision.

This case is before the Court for trial upon an amended complaint by the plaintiffs to have a document, or instrument of mortgage, executed by the plaintiffs and the defendants on the 23rd day of February, 1906, to secure the payment of an account current between the defendant Aldecoa & Company and the defendant Hongkong and Shanghai Banking Corporation, declared null and void and the plaintiffs relieved from responsibility on account thereof, on the ground that at the time of the execution of said document or instrument of mortgage the plaintiffs were minors and incompetent to make and execute the same.

The defendant Aldecoa & Company answered admitting part of the allegations of the complaint and set up as a special defense that the plaintiffs were minors but more than eighteen years of age, and that they had been emancipated by their mother the defendant Isabel Palet y Gabarro, and that they voluntarily mortgaged some of their property for the purpose of securing payment of an account current between the defendant Aldecoa & Company and the defendant Hongkong and Shanghai Banking Corporation.

The defendant Isabel Palet y Gabarro answered setting forth the fact that she had emancipated the plaintiffs, her children, after they were eighteen years of age, supposing that she had authority to do so, and that she had consented to their executing the mortgage upon their property to secure an account current between the defendant Aldecoa & Company and the defendant Hongkong and Shanghai Banking Corporation, supposing that she had power to authorize it by giving consent, but that she was in error, and asked that they be relieved from the responsibility incurred by them in the execution of the document.

Sr. Alfredo Chicote appeared in behalf of the plaintiffs;
296 Sr. Antonio Sanz for the defendant Aldecoa & Company;

Sr. Maximino Mina for the defendant Isabel Palet y Gabarro; and Mr. Charles C. Cohn for the defendant Hongkong and Shanghai Banking Corporation.

From the evidence presented at the trial I find: "That the plaintiff Zoilo Ibañez de Aldecoa y Palet at the time of the commencement of this action was a minor, duly represented by his guardian ad litem Vicente Miranda and the plaintiff Joaquin Ibanez de Aldecoa is of lawful age and appears in his own behalf."

That the defendant Aldecoa & Company, in liquidation, is a sociedad colectiva mercantil, and duly registered in the Mercantil Registry, and that William Urquhart is the liquidator;

That the defendant Isabel Palet y Gabarro is one of the capitalist partners of the defendant firm Aldecoa & Company;

That the defendant Hongkong and Shanghai Banking Corporation is a corporation duly organized and doing business in the City of Manila, and properly registered;

That on the 31st day of December, 1896, the plaintiffs, according to a public document, became industrial partners in the aforementioned partnership of Aldecoa & Company, and they so continued until the document was declared null and void by this Court,

297 in so far as plaintiffs were concerned, by judgment ordered September 5th, 1908;

That on the 31st day of July, 1903, Isabel Palet Gabarro, mother of the plaintiffs, their father being dead, by public document executed before a Notary Public in Manila, emancipated each of the plaintiffs, they each then being more than eighteen years of age;

That on the 23rd day of February, 1906, the defendant Aldecoa & Company was debtor in a large amount upon an account current with the defendant Hongkong and Shanghai Banking Corporation, and was threatened by the bank with proceedings to collect the amount due, which would have been the destruction of its business,

unless payment of the debit of the account was secured in some way, and that thereupon the plaintiffs, believing that they were industrial partners in the firm of Aldecoa & Company and being anxious to protect the good name of their father and preserve the name of the Company, at the head of which their father had for a long time been, and in consideration of the indebtedness of Aldecoa & Company before mentioned and of certain agreements made on the part of defendant bank and the defendant Aldecoa & Company, joined in executing a document with the defendants, whereby they with their mother, through her attorney Fernando Zobel, mortgaged their undivided interests in certain real property to secure payment of said indebtedness;

298 That when this document was executed the plaintiffs exercised the emancipation which had been conceded them by their mother as hereinbefore stated, and executed the document with her consent;

It must be concluded that the mortgage was executed with her consent because in the document, Exhibit "F," in which she authorized Fernando Zobel to act for her, she authorized him to execute the mortgage, in question in conjunction with her sons, the plaintiffs, and they otherwise had her consent though objection was made in the first place to the making of the mortgage.

The mortgage was duly executed, the consideration therefor existed, the plaintiffs were duly emancipated under the provisions of the Civil Code, and they had the consent of their mother, in the absence of their father, to execute the mortgage.

The only questions which remain to be determined are: "Did the mother of the plaintiffs have power at law to emancipate her children, the plaintiffs, so that they could freely dispose of, or mortgage their real property, having her consent so to do.

Under the laws in force in the Philippine Islands at the time the documents of emancipation, hereinbefore referred to, were executed, the father, or in case of his death or disqualification, the mother of a minor child, is the natural guardian of the child and is entitled to its custody, but not of its estate, unless it is so ordered by the Court, (See Section 553 of Act 190.)

299 Clearly then the mother, being the natural guardian of the plaintiffs, but not having the legal custody of their estate, for it nowhere appears that the Court has ordered their estate into her custody, or in any way subrogated it to her control, might emancipate the plaintiffs from her personal custody, but could not authorize them while minors to dispose of, or mortgage their real estate, without the sanction of the Court.

The document executed by the plaintiffs on the 23rd day of February, 1906, whereby they mortgaged certain of their real property to the defendant bank, was without authority in so far as these plaintiffs are concerned, and the plaintiffs are entitled to have it declared null and void as to them, and the registry of it as to them and their interest in the real estate described therein cancelled.

Let judgment be entered in favor of the plaintiffs, Joaquin Ibanez de Aldecoa y Palet and Zoilo Ibanez de Aldecoa y Palet, and

against the defendants, Aldecoa y Compañia, in liquidation, Isabel Palet y Gabarro, widow of Ibanez de Aldecoa, and the Hongkong and Shanghai Banking Corporation, declaring a document made and executed by the plaintiffs with the defendants on the 300 23rd day of February, 1906, whereby plaintiffs mortgaged certain undivided interests which they had in real estate to secure the payment of the current account existing between the defendant Aldecoa & Company and the defendant Hongkong and Shanghai Banking Corporation, to be null and void as to the plaintiffs, and the registry thereof in the Registry of Property, so far as the plaintiffs are concerned, be cancelled.

No costs will be taxed.

Manila, P. I., March 28th, 1910.

(Sgd.)

A. S. CROSSFIELD, *Judge*.

6.

The counsel for plaintiffs and for the Hongkong and Shanghai Banking Corporation, on the 6th day of April, filed their exception against the decision of the Court and asked for a new trial of the case; and on the 14th of the same month and year the Hongkong and Shanghai Banking Corporation asked for a new trial of the case on the ground of newly discovered evidence. Said motion is as follows:

301

(Title of the Case Omitted.)

Now comes the defendant the Hongkong and Shanghai Banking Corporation and respectfully asks that the judgment rendered in this case be set aside and a new trial granted in said case, basing this petition in the following motive, which materially affects its legitimate rights, to wit:

That there is newly discovered evidence necessary for this petitioner, who notwithstanding all due diligence and care exercised in this case has not been able to discover and offer same at the trial of this case, until now.

This motion is based on all the documents and pleading filed in this case, on this notice and on the sworn declaration of Charles C. Cohn attached hereto.

Respectfully submitted,

HAUSSERMANN COHN & FISHER,

(Sgd.) p. p. CHARLES C. COHN,

*Attorneys for the Hongkong and
Shanghai Banking Corporation.*

(Title of the Case Omitted.)

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

CHARLES C. COHN after being duly sworn deposes and says:

That he is now and has been at all times since the first day of January, 1906, one of the attorneys of the Hongkong and Shanghai Banking Corporation; that there is a public document executed on June 13th, 1907, before the Notary Public of the City of Manila, Mr. D. R. Williams, copy of which is attached to this affidavit and made part thereof.

That under and by virtue of said document, the Mortgage of February 23, 1906, which is the subject matter of this action, is confirmed and ratified by Mr. Joaquin Ibañez de Aldecoa, by himself, and by Mr. Zoilo Ibañez de Aldecoa through his attorney in fact, Don Jose Maria Ibañez de Aldecoa; that such confirmation and ratification are final and obligatory as regards plaintiff Zoilo Ibañez de Aldecoa.

That said instrument dated June 13, 1907, was not offered in evidence by the defendant at the date of the trial, because the affiant did not know that in said instrument express mention was made of the mortgage in question; that from February 26, 1906, up to the present time, in the mutual transactions had by and between Aldecoa and Company in liquidation and the Hongkong and Shanghai Banking Corporation, a good many instruments have been executed, not less than forty in number, and, although deponent has intervened personally in the drafting and execution of almost all of said instruments, he has been unable to remember the contents of each and every one of them; that on the day of the trial of the above entitled case, deponent believed that each and every one of the instruments, agreements and documents executed by and between the Hongkong and Shanghai Banking Corporation and Aldecoa and Company in liquidation were executed only by the liquidator of said firm, and by a natural oversight, which ordinary diligence could not prevent, was ignorant of the fact that said instrument dated June 13, 1907 which mainly refers to a judicial bond for an injunction against Mr. Alexander S. Macleod, was executed by the plaintiffs in this case, and that said instrument made reference and affected the mortgage of February 23, 1906; that the relation between said instrument and the mortgage was accidentally discovered by the affiant on this date, April 11, 1910, at the trial of an action regarding certain shares of stock which belonged to Aldecoa and Company, which trial was set for today.

Manila, P. I., April 11, 1910.

(Sgd.)

CHARLES C. COHN.

Subscribed and sworn to before me this 11th day of April, 1910;

affiant exhibited his Certificate of Registration letter F, No. 4736, issued in Manila on the 14th day of January of the present year.

(Sgd.)

FLORENCIO GONZALES DIEZ,

[NOTARIAL SEAL.]

Notary Public.

My commission expires December 31st, 1910.

304 This memorandum of agreement, made and executed this 13th day of June, 1907, by and between Don Joaquin Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet, and Doña Isabel Palet y Gabarro, viuda de Aldecoa, all of them the parties of the first part, Aldecoa and Company in liquidation the party of the second part, and the Hongkong and Shanghai Banking Corporation, the party of the third part;

Witnesseth: that by, and in consideration of a certain bond executed by the party of the third part, for the sum of fifty thousand pesos (P50,000.00) in the suit which is about to be filed by the party of the second part against Mr. Alexander S. Macleod, over certain shares of stock of the "Pasay Estate Co. Ltd.", the value of which amounts to one hundred and sixty thousand pesos (P160,000.00) Philippine Currency, which bond is to be furnished in order to obtain an injunction against the sale of said shares of stock or the proceeds thereof while the case be pending in Court.

The parties of the first part and of the second part agree and covenant as follows:

1. That the proceeds of said suit against said Alexander S. Macleod, in case the judgment rendered be favorable to the plaintiff, shall be applied in full to the payment pro tanto of the sum which the firm of Aldecoa and Company, or Aldecoa and Company
305 in liquidation, owes to the party of the third part, deducting only from said proceeds the necessary expenses of said action, including the fees of the attorneys who are to represent the said plaintiff, the balance to be delivered to the creditor bank for the purpose above mentioned.

2. That in case said Hongkong and Shanghai Banking Corporation, should incur in any liability as bondsman in said suit, the obligation of the firm of Aldecoa and Company to indemnify said Bank from said liability shall be added to the sum which the said firm owes the said Bank and the payment thereof shall be secured by the same mortgages executed, mentioned and described in the instrument which the parties of the first and of the second part executed in its favor on the 23rd day of February, 1906, (a copy of which is attached to and made part of this document) under the terms and conditions of said mortgage.

3. That the Hongkong and Shanghai Banking Corporation shall not be directly or indirectly liable for the payment of the costs or expenses of the above mentioned suit, that is to say, for the Court fees, attorneys' fees, etc., etc.

4. That the contracting parties above named bind themselves to

executed whatever documents or instruments may be necessary to secure or duly record the purposes above stated.

In witness whereof, the parties hereto sign this document in Manila this 13th day of June nineteen hundred and seven (1907).

	ISABEL PALET AND ZOILO
	IBAÑEZ DE ALDECOA,
(Sgd.)	p. p. J. M. Y. DE ALDECOA,
	ALDECOA AND COMPANY
	in Liquidation,
(Sgd.)	By WILLIAM URQUHART.
(Sgd.)	JOAQUIN Y. DE ALDECOA.
	For the HONGKONG AND SHANG-
	HAI BANKING CORPORA-
	TION,
(Sgd.)	A. G. STEPHEN, <i>Manager</i> .

In the presence of:

(Sgd.) CHARLES C. COHN.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila, this 13th day of June, 1907, before me personally appear Don Jose Maria Ibañez de Aldecoa, as attorney in fact and legal representative of Doña Isabel Palet y Gabarro viuda de Aldecoa, and of Don Zoilo Ibañez de Aldecoa y Palet; Don Joaquin Ibañez de Aldecoa y Palet; by his own right, Mr. William Urquhart as liquidator of the firm of Aldecoa and Company in liquidation, and Mr. Alexander Gordon Stephen on behalf of the Hongkong and Shanghai Banking Corporation, whom I know to be the persons who executed the foregoing document which they ratify and state the same to be an act of their free will and deed.

Said gentlemen exhibited their Certificates of Cedula, the first, No. 674, issued at Manila the 6th of June, 1907; the second, No. B-164876, issued at Manila the 13th day of May, 1907, the third, No. A-1488603, issued at Manila, the 8th of February, 1907; and the last, No. A-1479705, issued at Manila the 18th of January, 1907.

In witness whereof, I have hereunto set my hand and official seal, at the foot of this certificate, the day, month and year above said.

(Signed)
[NOTARIAL SEAL.]

D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

This motion was opposed by plaintiffs' counsel by the following counter motion affidavit:

(Title of the Case Omitted.)

Now comes the counsel for plaintiffs and objects to the motion of the defendant the Hongkong and Shanghai Banking Corporation asking that the judgment rendered in this case be set aside and new trial be had of said case.

The reasons for this objection are the following:

1. That the evidence which in the petition is alleged to be newly discovered consists of the document attached to said motion and as it can be seen, both the Hongkong and Shanghai Banking Corporation as well as its attorneys, had full knowledge of the existence of said document from the very same date in which it was executed, to wit, from the 13th day of June, 1907, for the reason that said defendant was one of the parties who executed the said document attached to its motion, and said document was ratified before one of the members of the law firm representing the defendant, who acted as a Notary Public, and was furthermore subscribed by another one of the members of said law firm who acted as witness.

That the defendant the Hongkong and Shanghai Banking Corporation as well as its attorneys in this case, had full knowledge of the contents of said document long before the date of this motion and long before judgment was rendered in this case, for the reason that: in Civil case No. 6087 of this Court the document referred to and attached to the motion for a new trial, was offered by said defendant and its attorneys, who in said case No. 6087 of this Court, made special, complete and direct use of the said document and pleaded the same conclusively and specially on September 2, 1909, at which date this case wherein a new trial is asked, had not been decided yet by this Court, as it all appears from the affidavit attached hereto.

309 3. That the evidence referred to in the motion, besides not being newly discovered is furthermore unnecessary for the petitioner for the reason that the answer given by petitioner in this case consists of a general denial of the facts alleged in the complaint without setting forth any special defense which may contain the allegation that the contract referred to in the complaint, should have been at any time confirmed or ratified, and without having raised any issue as to this fact during the trial. And therefore, what is now alleged to be a necessary proof in this case, is not so, either to contradict any evidence or fact alleged by plaintiffs or to prove any allegation of any of the parties defendant in this case; and this being so, said document is irrelevant and absolutely unnecessary as evidence.

4. The motion, furthermore, is improper, because the document attached to the petition for a new trial is not a confirmation of the contract, as alleged by the defendant for the reason that, in accordance with the provisions of the Civil Code, Articles 1309-1310 and 1311, the confirmation may be made either expressly, that is to say, making over the contract in order to purify and confirm it, or tacitly, in which case it is necessary that it shall appear in an un-

mistakable manner at the time of executing the act alleged to confirm the prior null contract: 1st. That the party confirming
 310 said contract shall have full knowledge of the cause of the nullity of the prior contract to which the tacit confirmation is said to refer; and 2nd. That the act done shall necessarily imply the will to waive the cause of nullity (Article 1311). And besides, because only those contracts can be confirmed which contain all the essential requisites for the existence of a contract, and in this present case, said contract is voidable and is judicially declared void and null by reason of the fact that Joaquin Ibañez de Aldecoa could not, and never did consent to the contract of February 23, 1906, pronounced null and void by the judgment rendered in this case.

5. And, finally, the motion of the defendant the Hongkong and Shanghai Banking Corporation is improper because the document attached to said motion is, by itself, also null and void, for the reason that said contract was executed by Joaquin Ibañez de Aldecoa under the belief, and on consideration that said Joaquin Ibañez de Aldecoa was a general partner (socio colectivo) of the firm of Aldecoa and Company, and it is a fact that said Joaquin Ibañez de Aldecoa was not, at the time of the execution of the document attached to the motion, a partner of Aldecoa and Company, nor was he liable under
 311 said partnership or firm. All of which was maliciously concealed from said Joaquin Ibañez de Aldecoa who was made to believe just the opposite.

Wherefore, counsel for plaintiffs asks that the petition of the defendant the Hongkong and Shanghai Banking Corporation asking that the judgment be set aside and a new trial granted in this case, be denied.

Manila, April 15th, 1910.

(Sgd.)

CHICOTE AND MIRANDA,

Attorneys for the Plaintiffs.

(Title of the Case Omitted.)

I, Alfredo Chicote y Beltran, attorney at Law of lawful age and resident of this City, under oath, taken in due form, solemnly state:

That I am and have been for some years prior to this date, one of the members of the law firm of Chicote and Miranda.

That I am acquainted with civil cases Nos. 6086 and 6087 of the Court of First Instance of the City of Manila, and I know also the supplementary proceedings on execution in the said case No. 6087 against certain property alleged to belong to the defendants in said case, Aldecoa and Company, and in the possession of the Hongkong and Shanghai Banking Corporation.

That I know personally and of my own knowledge that the document dated June 13, 1907 referred to in the motion for the reopening of case No. 6086, makes express reference to the instrument
 312 dated February 23, 1906, and this last named instrument is made and integrant part of the other document dated June 13, 1907, and its contents included in the contents of the latter.

That in case No. 6087 above referred to, The Hongkong and Shanghai Banking Corporation pleaded under the oath of its Manager, Mr. Stephen, the document dated June 13, 1907, and argued about the contents thereof and therefore, said defendant and its attorneys had special, full and direct knowledge of all of its contents, and therefore, of the contents of the instrument dated February 23, 1906, made a part thereof; and that said oath and pleading were made in September 1909; and that on several occasions later on, the attorneys of the defendant, the Hongkong and Shanghai Banking Corporation made allegations about the same fact in case No. 4793 of this Court, as it all appears more in detail in the report made in case No. 6087 and especially in the supplementary proceedings instituted by the plaintiffs in this case towards obtaining from the Hongkong and Shanghai Banking Corporation the delivery of certain shares of stock of the Pasay Estate described in said case.

Manila, April 15th, 1910.

(Sgd.)

ALFREDO CHICOTE.

Subscribed and sworn to before me this 16th day of April, 1910,
having exhibited his personal cedula No. F-25693, issued at
313 Manila on the 4th day of March, 1910.

(Sgd.)

J. McMIKING, *Clerk.*

7.

After motion for a new trial was called for hearing the Court on April 27, 1910 entered the following:

Order.

This case is before the Court for the hearing of the second motion of the defendant the Hongkong and Shanghai Banking Corporation for a new trial of this case on the ground that new evidence has been discovered.

Attorney Mr. Chicote appeared on behalf of the plaintiff and Mr. Cohn on behalf of the Hongkong and Shanghai Banking Corporation who submitted the motion without argument.

The motion is based on the affidavit of Charles C. Cohn on newly discovered evidence, consisting of a public document a copy of which is attached to the affidavit, and seems to ratify the mortgage executed on February 23, 1906, which has been declared null and void in regard to plaintiffs by the judgment rendered in this case.

314 Said document is executed by plaintiff Zoilo Ibañez de Aldecoa, through his attorney in fact J. M. Y. de Aldecoa, and by plaintiff Joaquin I. de Aldecoa, on the 13th day of June, 1907.

By the evidence adduced before this Court I am of the opinion that plaintiff Zoilo I. de Aldecoa, was not then of lawful age and that plaintiff Joaquin I. de Aldecoa was of lawful age and could lawfully execute said document.

It appearing that this is a newly discovered evidence and that it bears on the issues raised in the present case.

It is hereby ordered that the motion for a new trial be and is hereby granted in what may affect plaintiff Joaquin I. de Aldecoa. Manila, April 27, 1910.

(Sgd.)

A. S. CROSSFIELD, *Judge*.

8.

After the new trial of the case was had, the Court on January 27, 1911, rendered the following

Decision.

This case is before the Court for trial upon an amended complaint by the plaintiffs to have a document, or instrument of mortgage, executed by the plaintiffs and the defendants on the twenty-
315 third day of February, 1906, to secure the payment of an account current between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, declared null and void in so far as plaintiffs are concerned and the plaintiffs relieved from responsibility on account thereof, on the ground that at the time of the execution of said instrument or mortgage the plaintiffs were minors and incompetent to make and execute the same.

The defendant Aldecoa & Company answered admitting part of the allegations of the complaint and set up as a special defense that the plaintiffs were minors but more than eighteen years of age, and that they had been emancipated by their mother the defendant Isabel Palet Gabarro, and that they voluntarily mortgaged some of their property for the purpose of securing payment of an account current between the defendant Aldecoa and Company, and the defendant Hongkong and Shanghai Banking Corporation.

The defendant Isabel Palet Gabarro answered setting forth the fact that she had emancipated the plaintiff, her children, after their eighteen- years of age, supposing that she had authority to do so, and that she had consented to their executing the mortgage upon their property to secure an account current between the defendant Aldecoa and Company and the defendant and Hongkong and Shang-
hai Banking Corporation, supposing she had power to au-
316 thorize it by giving consent, but that she was in error, and asked that they be relieved from the responsibility incurred by them in the execution of the document.

Sr. Alfredo Chicote appeared in behalf of the plaintiffs; Señor Antonio Sanz for the defendant Aldecoa and Company; Señor Maximino Mina for the defendant Isabel Palet Gabarro; and Mr. Charles C. Cohn for the defendant Hongkong and Shanghai Banking Corporation.

The case was once before tried and judgment entered. A new trial was granted upon the allegation of newly discovered evidence on the part of the defendant Hongkong and Shanghai Banking Cor-

poration. The evidence submitted at the first trial is all resubmitted and the only additional evidence submitted by any one was a memorandum of agreement executed by the plaintiffs and the defendant Isabel Palet Gabarro and the defendant Aldecoa and Company.

From all the evidence thus presented at the second trial I find that the plaintiff Zoilo Ibañez de Aldecoa y Palet at the time of the commencement of this action was a minor duly represented by his guardian ad litem, Vicente Miranda, and the plaintiff Joaquin Ibañez de Aldecoa is of lawful age and appears in his own behalf.

That the defendant Aldecoa and Company in liquidation, is a sociedad colectiva mercantil and duly registered in the mercantile registry, and that William Urquhart, is the liquidator;

That the defendant Isabel Palet Gabarro is one of the capitalist partners of the defendant firm Aldecoa and Company;

That the defendant Hongkong and Shanghai Banking Corporation is a corporation duly organized and doing business in the City of Manila, and properly registered;

That on the thirty first day of December, 1896, the plaintiff, according to a public document became industrial partners in the aforementioned partnership of Aldecoa and Company, and they so continued until the document was declared null and void by this Court, in so far as plaintiffs were concerned, by judgment ordered September fifth, 1908;

That on the 31st day of July, 1903, Isabel Palet Gabarro mother of the plaintiffs, their father being dead, by public document executed before a notary public in Manila, emancipated each of the plaintiffs, they each then being more than eighteen years of age;

That on the twenty third day of February 1906, the defendant Aldecoa and Company, were debtors in a large amount upon an account current with the defendant Hongkong and Shanghai Banking Corporation, and was threatened by the bank with proceedings to collect the amount due, which would have been the destruction of its business, unless payment of the debit of the account was secured in some way, and that thereupon the plaintiffs, believing that they were industrial partners in the firm of Aldecoa and Company, and being anxious to protect the good name of which their father had for a long time been, and in consideration of the indebtedness of Aldecoa and Company before mentioned and of certain agreements made on the part of the defendant bank and the defendant Aldecoa and Company, joined in executing a document with the defendants, whereby they with their mother, through her attorney, Fernando Zobel, mortgaged their undivided interests in certain real property to secure payment of said indebtedness;

That when this document was executed the plaintiffs exercised the emancipation which had been conceded them by their mother, as herein before stated, and executed the document with her consent;

It must be concluded that the mortgage was executed with her consent, because in the document Exhibit "F," in which she authorized Fernando Zobel to act for her, she authorized him to execute the

mortgage in question in conjunction with her sons, the plaintiffs, and they otherwise had her consent though objection was made in the first place to the making of the mortgage.

The mortgage was duly executed, the consideration existed, 319 the plaintiffs were duly emancipated under the provision of the Civil Code, and they had the consent of their mother, in the absence of their father, to execute the mortgage.

That on the thirteenth day of June, 1907, the plaintiffs, together with their mother, Doña Isabel Palet Gabarro, as parties of the first part, entered into a memorandum of agreement with the defendant Aldecoa and Company in liquidation, as party of the second part, and the Hongkong and Shanghai Banking Corporation as party of the third part, in which it was agreed by the party of the first part and of the second part that in case the party of the third part gave bond in a case then pending, in which the party of the second part had interest, that the proceeds of such judgment should be applied upon the account existing between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, and that if the Hongkong and Shanghai Banking Corporation should incur any loss on account of the obligation, that the defendant Aldecoa and Company would indemnify them for such loss and it should be added to the amount which the said Aldecoa and Company already owed said bank and that the payment of it should be guaranteed by the same mortgage, executed on the

23rd day of February, 1906, hereinbefore described:

320 That at the date of the execution of this memorandum of June 13, 1907, the plaintiff Joaquin Ibañez de Aldecoa had become of adult age.

The only questions for determination are: Did the mother of the plaintiffs have power at law to emancipate her children, the plaintiffs, so that they could freely dispose of or mortgage their real property, having her consent so to do?

Under the laws in force in the Philippine Islands at the time the documents of emancipation, hereinbefore referred to, were executed, the father, or in case of his death or disqualification, the mother of a minor child, is the natural guardian of the child and is entitled to its custody, but not of its estate, unless it is so ordered by the Court, (See sections 353 of Act 190).

Clearly, then, the mother, being the natural guardian of the plaintiffs, but not having the legal custody of their estate, for it nowhere appears that the Court has ordered their estate into her custody, or in any way subrogated it to her control might emancipate the plaintiffs from her personal custody, but could not authorize them while minors to dispose of or mortgage their real estate, without the sanction of the Court.

The document executed by the plaintiffs on the twenty third day of February, 1906, whereby they mortgaged certain of their 321 real property to the defendant Bank, was without authority in so far as these plaintiffs are concerned, and the plaintiffs are entitled to have it declared null and void as to them, and the registry of it as to them and their interest in the real estate described

therein cancelled, if the plaintiffs Joaquin Ibañez de Aldecoa, after becoming of age, had not ratified the mortgage made on the twenty third day of February, 1906, by recognizing it as being in existence on the thirteenth day of June, 1907, after he had become of adult age.

The plaintiff Boilo Ibañez de Aldecoa y Palet is entitled to have the mortgage declared null and void as to him and the registry of it as to him and his interest in the real estate described therein cancelled.

Let judgment be entered dismissing the complaint in so far as the plaintiff Joaquin Ibañez de Aldecoa y Palet and in favor of the plaintiff Zoilo Ibañez de Aldecoa y Palet and against the defendants Aldecoa and Company in liquidation, Isabel Palet y Gabarro, widow of Ibañez de Aldecoa, and the Hongkong and Shanghai Banking Corporation, declaring the document made and executed by the plaintiffs, with the defendants on the twenty third day of February, 1906, whereby plaintiffs mortgaged certain undivided interests which they had in real estate to secure the payment of the current account existing between the defendant Aldecoa and Company and the defendant Hongkong and Shanghai Banking Corporation, to be
 322 null and void as to this plaintiff Zoilo Ibañez de Aldecoa and the registry thereof in the registry of Property, so far as this plaintiff is concerned be cancelled.

No costs will be taxed.

(Sgd.)

A. S. CROSSFIELD, *Judge.*

Manila, P. I., January 27, 1911.

9.

Against the foregoing decision, the plaintiffs filed their exception, as follows:

(Title of the Case Omitted.)

Now comes counsel for plaintiff Joaquin Ibañez de Aldecoa in the above entitled case, and excepts to the decision rendered in this case dismissing the complaint as to Joaquin Ibañez de Aldecoa, and asks that this exception be duly recorded for the legal effects thereof.

Manila, February 1st, 1911.

(Sgd.)

CHICOTE AND MIRANDA,

Attorneys for Plaintiff Joaquin Ibañez de Aldecoa.

And on February 1, 1911, plaintiffs asked for a new trial, as follows:

(Title of the Case Omitted.)

Now comes counsel for plaintiff Joaquin Ibañez de Aldecoa
 323 and asks the Court to annul and set aside the judgment rendered in this case dismissing the complaint as to Joaquin Ibañez de Aldecoa, and moves for a new trial of this case for the following reasons:

1st. That the decision rendered is contrary to law.

2nd. Because the decision of the Court is not justified by the evidence, and the findings of fact in said judgment are openly and manifestly against the weight of evidence.

Manila, February 1st, 1911.

(Sgd.)

CHICOTE AND MIRANDA,
Attorneys for Plaintiff Joaquín Ibañez de Aldecoa.

(Title of the Case Omitted.)

Now comes counsel for the plaintiff Zoilo Ibañez de Aldecoa and excepts to the decision rendered in this case and asks that a new trial be granted, basing this petition in the fact that the decision of the Court does not find in favor of this plaintiff all the motive by him alleged in the complaint for the nullity of the contract, and that the decision is contrary to the weight of the evidence and is not justified by the same.

Manila, February 1st, 1911.

(Sgd.)

CHICOTE AND MIRANDA,
Attorneys for Plaintiff Joaquín Ibañez de Aldecoa.

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10.

After hearing the parties, on February 18, 1911, the Court resolved the motions for new trial, as follows:

(Title of the Case Omitted.)

This case is before the Court for the hearing of the motions for a new trial filed by plaintiffs and defendant.

Mr. C. C. Cohn appeared on behalf of the defendant the Hongkong and Shanghai Banking Corporation, and no one else appeared for any other of the parties.

It is ordered that both motions for a new trial be denied.

Manila, P. I., February 18, 1911.

(Sgd.)

A. S. CROSSFIELD, *Judge.*

Against the denial of the new trial the plaintiffs excepted on February 23, 1911, and at the same time announced their intention to file a Bill of Exceptions and carry the case on appeal to the Supreme Court.

11.

And the plaintiffs carrying into effect their intention to file a Bill of Exceptions, do hereby file the same and ask that all the evidence both oral and documentary adduced at the trial be attached hereto and made part of the Bill of Exceptions. Plaintiffs ask that this Bill of Exceptions be approved and certified

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to and the case be sent to the Supreme Court for the legal effects of this appeal.

Manila, February 28, 1911.

(Sgd.)

CHICOTE AND MIRANDA,
Attorneys for Plaintiffs.

Judges Certificate to the Bill of Exceptions.

(Title of the Case Omitted.)

I hereby certify that the foregoing Bill of Exceptions is correct and contains all the essential parts for a clear understanding of all the errors assigned. Execution of the judgment shall not be stayed unless the appellant executes a good and sufficient bond in the sum of (P—) with sureties of recognized solvency to the satisfaction of the Court, to secure the performance of the judgment appealed from in case it be affirmed in whole or in part.

Manila, March 4, 1911.

(Sgd.)

A. S. CROSSFIELD, *Judge.*

326 PHILIPPINE ISLANDS,
Manila, ss:

The undersigned hereby certifies that the foregoing Bill of Exceptions, composed of 51 pages, is the original Bill of Exceptions presented by the appellant and approved by this Court.

In faith whereof I sign these presents, in Manila, this 23 day of March, 1911.

(Sgd.)

J. McMICKING, *Clerk.*

Supreme Court of the Philippines—Clerk's Office. Filed, March 23, 1911. J. E. Blanco, Clerk, 11:30 a. m.

Bee it known that in this 28th day of April 1911, and by registered mail three copies of this printed Bill of Exceptions have been sent to each one of the parties of this case.

J. E. BLANCO,

Clerk, Supreme Court, P. I.,

By R. HERAS,

Deputy Clerk.

(Sgd.)

The parties filed their printed briefs and counter-briefs as appellants and appellees.

The Hongkong and Shanghai Banking Corporation in its brief as appellant filed the following statement of errors alleged to have been committed by the lower Court.

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Specification of Errors.

1. The Court erred in denying the motion of the appellant bank to strike out certain specified portions of the first amended complaint of plaintiffs.

2. The Court erred in overruling the demurrer of the appellant bank to the first amended complaint of plaintiffs.

3. The Court erred in denying the motion of the appellant bank to strike out certain portions of the second amended complaint of plaintiffs.

4. The Court erred in overruling the demurrer of the appellant bank to the second amended complaint of plaintiffs.

5. The Court erred in failing to render judgment in favor of the appellant bank upon the separate and distinct causes of action set forth in paragraphs V, VI and VII of the second amended complaint.

6. The Court erred in concluding that on February 23, 1906, the plaintiff Zoilo Ibañez de Aldecoa was without capacity to execute the mortgage in question herein.

The errors assigned and specified by plaintiff and appellant Joaquin Ibañez de Aldecoa are as follows:

328 1. The Court erred in granting the defendant the Hongkong and Shanghai Banking Corporation the new trial asked for, on April 27, 1910.

2. The Court erred in finding that Joaquin Ibañez de Aldecoa on June 13, 1907, ratified the deed of mortgage executed on February 23, 1906.

3. The Court erred finally in dismissing the complaint in so far as this plaintiff (Joaquin Ibañez de Aldecoa) is concerned.

After the parties appellant and appellee filed their respective briefs the following written stipulation was submitted to the Supreme Court:

Agreement Between Counsel for Plaintiff and Counsel for The Hongkong and Shanghai Banking Corporation.

Now come plaintiffs in this case and defendant the Hongkong and Shanghai Banking Corporation through their respective attorneys before this Honorable Court and respectfully state:

That for the purposes of the decision in this case the parties litigant above mentioned have agreed that the facts hereinafter stated are true and ask this Court to consider them as if they have been included as proven facts in the decision of the lower Court:

329 1. That plaintiffs Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa were born in the Philippine Islands on Mart 27, 1884, and July 4, 1885 respectively.

2. That said plaintiffs are the legitimate children of the deceased Don Zoilo Ibañez de Aldecoa and of Doña Isabel Palet, his widow.

3. That said Zoilo Ibañez de Aldecoa now deceased and his widow Doña Isabel Palet were both spaniards natives of Spain, born of spanish parents.

4. That the deceased Don Zoilo Ibañez de Aldecoa, father of said plaintiffs being a resident of and domiciled in the Philippine Islands died in Manila, on October 4, 1895.

5. That Doña Isabel Palet, viuda de Aldecoa, mother of these

plaintiffs being a resident of and domiciled in the Philippine Islands by reason of her poor health left the Philippine Islands on or about the year 1897 and was absent from said Islands until the year 1902 when she returned to the same and preserved her domicile therein until the year 1906.

6. That plaintiffs Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa were absent from the Philippine Islands in the company of their mother from the year 1897 until they came back
330 to the Islands or or about the year 1902 where they had been continuously residing and have at present their legal residence.

7. That plaintiffs Joaquin and Zoilo Ibañez de Aldecoa from the time of their return to the Philippines on the year 1902 have several times stated before the judicial authorities and before the administration officials, to be filipinos and as such they have obtained passports from the American administrative and consular authorities.

Manila, P. I., February 5, 1912.

(Sgd.)

CHICOTE AND MIRANDA,

Attorneys for Plaintiffs.

HAUSSERMAN, COHN AND
FISHER.

(Sgd.)

p. p. F. C. FISHER,

*Attorneys for the Hongkong and Shanghai
Banking Corporation.*

The above stipulation was approved by the Supreme Court of the Philippine Islands on February 7, 1912.

The case was argued before the Supreme Court on February 19, 1912, and after being again argued was finally submitted on the 14th day of January 1914, the Supreme Court of the Philippine Islands, on March 23, 1915, rendered the following decision:

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(No. 6889, March 23, 1915.)

JOAQUIN IBAÑEZ DE ALDECOA Y PALET et al., Plaintiffs and Appellants,

vs.

THE HONGKONG & SHANGHAI BANKING CORPORATION et al., Defendants and Appellants.

Syllabus.

1. Guardian and Ward; "Patria Potestad" (Parental Authority; Implied Repeal.—The provisions of the present Code of Civil Procedure relating to guardians repeal by implication that portion of the patria potestad (parental authority) relating to the administration and usufruct of the property of minor children by the parents. But parents are still entitled, under normal conditions, to the custody and care of the persons of their minor children.

2. Id: Id: Id: Scope of Section 581 of the Code of Civil Procedure.—

The saving proviso of section 581 of the Code of Civil Procedure was intended to withhold the application of the new law from all those incompetents who were at that time being taken care of under the provisions of the Civil Code and who would otherwise have been affected by the new law. A parent exercising the patria potestad (parental authority) over the property of his minor children was substantially, although not *eo nomine*, as nearly a guardian within the meaning of that word as used in the Code of Civil Procedure as the Civil Code guardian. The prerogative of the parent over the property of his minor children under the patria potestad (parental authority) and the Civil Code guardian have both been abolished by the new law of guardianship. It is therefore held that pending cases of the one and of the other are equally saved from the operation of the new law by section 581.

3. Parent and Child: Emancipation by Parents No Longer Possible.—Formal emancipation of minor children by their parents after the age of 18 is no longer possible.

4. *Id.*: Implied Emancipation.—As to whether implied emancipation is still permissible and as to the validity of contracts entered into by minor children while living apart from and independently of their parents under the present condition of the law, *quære*.

5. *Id.*: Emancipation After Enactment of Code of Civil Procedure.—A parent assumed charge of the property of her minor children in 1895 under the provisions of the Civil Code relating to the patria potestad (parental authority). Subsequent to the enactment of the new Code of Civil Procedure in 1901, she formally emancipated these children and still later the children executed a mortgage upon their real property with the formal consent of their mother.

Held, That the patria potestad (parental authority) of the mother did not terminate upon the enactment of the new Code of Civil Procedure, but was saved from the operation of the new law by section 581 thereof. Hence, her rights and duties as to her children as well as theirs, should be regulated by the provisions of the Civil Code. Under the Civil Code the mother could validly emancipate the children, and, subsequent to such emancipation, the children could execute a binding mortgage upon their real property with the consent of their mother.

Appeal from a Judgment of the Court of First Instance of Manila,
Crossfield, J.

The facts are stated in the opinion of the Court.

Chicote & Miranda, and Tirso de Irueta Goyena for plaintiffs.

Haussermann, Cohn & Fisher for defendants.

TRENT, J.:

This is an appeal from the judgment of the Court of First Instance of the City of Manila entered on the 27th day of January, 1911.

This action was commenced in October, 1908, by Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa to cancel a certain instru-

ment of mortgage executed by them, jointly with Aldecoa and Company and Isabel Palet, in favor of the Hongkong and Shanghai Banking Corporation. By this mortgage various properties of Aldecoa and Company, of Isabel Palet, and of the plaintiffs were hypothecated to secure the payment unto the bank of an overdraft of Aldecoa and Company, amounting to P475,000. The judgment of the trial court dismisses the action as to Joaquín Ibañez de Aldecoa and grants the relief sought in favor of Zoilo Ibañez de Aldecoa. Both Joaquín Ibañez de Aldecoa and The bank appealed.

The plaintiffs, Joaquín Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, were born in the Philippine Islands on March 27, 1884, and

July 4, 1885, respectively, the legitimate children of Zoilo Ibañez de Aldecoa and Isabel Palet. Both parents were natives

of Spain. The father's domicile was in Manila, Philippine Islands, and he died here on October 4, 1895. The widow, still retaining her Manila domicile, left the Philippine Islands and went to Spain in 1897, because of her health, and did not return until 1902. The two plaintiffs accompanied her on this journey and returned with her. After the death of the father, the firm of Aldecoa and Company, of which he had been a member, was reorganized, and his widow became one of the general, or "capitalistic," partners of the firm. In the public instrument which constitutes the articles of co-partnership, the plaintiffs appear as partners.

On July 31, 1903, Isabel Palet, the mother of the plaintiffs, who were then over the age of 18 years, went before a notary public and executed two instruments (Exhibits D and E) wherein and whereby she emancipated her two sons, the plaintiffs, with their consent. No guardian of the person or property of these two plaintiffs has ever been applied for or appointed under and by virtue of the provisions of the Code of Civil Procedure since the promulgation of said Code in 1901. Instead, the plaintiffs had continued from the death of their father under the custody of their mother until the execution of Exhibits D. and E.

On February, 23, 1906, the firm of Aldecoa and Company was heavily indebted to the Hongkong and Shanghai Bank, and the latter was desirous of collecting or securing the payment of this indebtedness. The correspondence between Aldecoa and Company, Isabel Palet, the plaintiffs and the bank disclosed that the bank would foreclose this account unless the same was sufficiently guar-

anteed by adequate securities. It was finally proposed that

Isabel Palet and her two sons, the plaintiffs, should mortgage, in addition to certain securities of Aldecoa and Company, certain of their real properties as security for the obligations of Aldecoa and Company. So, on February 23, 1906, the mortgage, which is the subject matter of the present action, was executed. On December 31, 1906, the firm of Aldecoa and Company expired by limitation of the partnership term, and the firm went into liquidation.

On June 30, 1907, Aldecoa and Company in liquidation, for the purposes of certain litigation about to be commenced in its behalf, required an injunction bond in the sum of P50,000., which was furnished by the bank upon the condition that any liability incurred on

the part of the bank upon the injunction bond would be added to the existing debt of Aldecoa and Company and would be covered by the mortgage of February 23, 1906. An agreement to this effect was executed by Isabel Palet, by the plaintiff Joaquin Ibañez de Aldecoa, who had then attained his full majority, and by Zeilo Ibañez de Aldecoa, who was not yet 23 years of age. Subsequent thereto, *ahí* in 1908, the plaintiffs commenced an action against their mother, Isabel Palet, and Aldecoa and Company, in which the bank was not a party, and in September of that year, procured a judgment annulling the articles of copartnership of Aldecoa and Company, in so far as the plaintiffs were concerned, and decreeing that they were creditors and not partners of that firm.

The question is presented whether Doña Isabel Palet could legally emancipate the plaintiffs under the law in force in this country July, 1903, and thus confer upon them capacity to execute a valid mortgage on their real property with her consent. The solution of

335 this question involves an inquiry as to the effect of the provisions of the new Code of Civil Procedure relating to guardianship upon certain provisions of the Civil Code relating to the control by parents over the persons and property of their minor children.

Under the Civil Code parents had general control over their property. The following articles of the Civil Code illustrate the extent of the parental authority over the property of their minor children under that Code:

159. The father, or in his absence, the mother, is the legal administrator of the property of the children who are under their authority.

160. The ownership of property which a child not emancipated may have acquired, or acquires by its work or industry or for any good consideration, is vested in the child, and the usufruct in the father or mother, who has him or her under his or her authority and in his or her company; but if the child, with the consent of the parents, lives independently of them, he or she shall be considered as emancipated for all purposes with regard to said property and shall own it and enjoy the usufruct and administration thereof.

161. The ownership and usufruct of what the child acquires with the capital of his or her parents is vested in the latter; but should the parents expressly assign to him or her the whole or a part of the profits which he or she may obtain, such profits shall not be chargeable to the latter in the inheritance.

162. The ownership or usufruct of the property or income donated or left by will to a child not emancipated, to cover the cost of his or her education and instruction, is vested in him or her; but the father or the mother shall have the administration thereof if no other proviso has been made in the gifts or bequests, in which case the will of the donors shall be strictly observed.

Nothing is here said of a bonded guardian appointed by the court and required to account to the court for the property and income of the child's estate. Filiation stood in lieu of those legal safeguards with which the present Code of Procedure envelops the property of a minor child. Not only this, but the income or usufruct of property

inherited by the child or bequeathed to it belonged to the parent unless the child had been formally emancipated or lived apart from his parent with the latter's consent. (Art. 160). True it is that the law prevented the alienation or incumbrance of real property of the child without permission of the court (Civil Code, art. 164; Mort. Law, art 205); and required the parent to give security, binding himself or herself to comply with the obligations imposed upon usufructuaries in case the parent contracted a second marriage. (Civil Code art. 492; Mort. Law, art. 200). But the restrictions such as these did not make a parent a guardian. The Civil Code drew a sharp and clearly distinguishable line between guardianship, properly so called, and the patria potestad, or parental authority. They were provided for in separate titles, and the definition of guardianship contained in article 199 of that code provided that it "is the custody of the persons and property only, of those who, not being under parental authority, are incapable of taking care of themselves."

The contrast between the patria potestad of the Civil Code and guardianship under our present code of procedure is none the less marked. The latter requires a guardian to obtain his appointment from the court; to execute a bond for the faithful performance of his duties; to make an inventory of the property, the management of which he undertakes, and to render accounts at specified intervals; to manage the estate of his ward frugally and without waste and apply the income and profits thereof to the support of the ward so far as may be necessary. A guardian is a court officer, responsible to the court, and dischargeable by the court alone.

There was, however, no conflict between the patria potestad and guardianship under the Civil Code. This was for the reason, as stated above, that the law of guardianship expressly excluded the patria potestad from its operation. But in the enactment of the present code of procedure, no attempt was made, in dealing with the subject of guardianship, to exclude the patria potestad from the operation of the law of guardianship. For the purpose of inaugurating a procedure on the subject of guardianship more in consonance with the remainder of the new procedure, whole sections of the California probate procedure were incorporated almost verbatim in the new code. These borrowed sections comprise practically all of our present law of guardianship. As there is no such institution in the State of California as the patria potestad, it is manifest that no provision saving it from the operation of the law of guardianship would be found in the laws of that state. In other words the law of guardianship in California extended to and included minor children whose parents were still living. It was this law which was incorporated into the new code of procedure, and the Philippine Commission inserted no exception saving the institution of patria potestad from its operation. The language of the new law is too plain to permit of the courts giving it an interpretation which would permit of the continued existence of the patria potestad with regard to the child's estate, unless language be wholly disregarded. Section 551 provides that the court may appoint a guardian of the person or estate of a minor. Certainly, this language is comprehensive enough

to include all minors, whether their parents are living or not. If the law does not command or prohibit, it permits; and where the grant is unrestricted, it reaches all subjects within the grant. Section 553 expressly abolishes the prerogative of the father and the mother, in the order named, of administering the property of their minor children, and gives the court power to appoint another person.

338 Here, the specific language of the law shows that guardianship is meant to include minor children whose parents or one of them are living.

Under section 553, the person appointed guardian of the child's estate is entitled to possession. This is clearly inconsistent with the parent's right of usufruct, for the usufructuary is entitled to possession. Section 569 provides for the sale of real estate and the reinvestment of the proceeds. It is apparent that this section contemplates an absolute sale, and that such a sale is not consistent with a usufructuary interest vested in the parent. These, as well as other specific provisions of the new code, make it clear that the repugnance between the *patria potestad* and the new law of guardianship is such that the parent, as such no longer has the power to enjoy the administration and usufruct of the property of his minor children.

Keeping this résumé of the repugnance between the *patria potestad* and the new law of guardianship in mind, let us now notice the argument that the appointment of a guardian under the new law for a minor child whose parents or one of them is living is a discretionary duty of the court, and that the *patria potestad* may still exist, subject only to the power of the court to bring the child and his property under the operation of the new law of guardianship.

It is true that section 551 confers the power of appointment upon the court as a matter of discretion—"when it appears necessary or convenient." But the scope of this discretion is restricted to the question of whether there shall or shall not be appointed a statutory guardian. It does not delegate to the court the power of deciding

whether the child and his property shall be governed by the
339 Spanish *patria potestad* or by the provisions of the present Code of Civil Procedure. It does not leave to the court the power to bestow the usufruct of the child's property upon the parent as a matter of grace. As we have stated above, the new law of guardianship was enacted without the slightest attempt being made to preserve the institution of *patria potestad*. As we have also seen, the Civil Code selected minor children whose parents or one of them was living as a special class of incompetents for whom a special form of guardianship was provided, and this was recognized as an exception from the operation of the law of guardianship (art. 199). The new law of guardianship as contained in the Code of Civil Procedure, was enacted without reference to the preëxisting law relating to incapacitated persons. It was borrowed almost verbatim, and, certainly, in all substantial particulars, from the statutes of California, where the Spanish *patria potestad* was unknown. We must interpret and apply that law as it comes to us and allow to it the full vigor of its language. Its application here, in accordance with well known rules of statutory construction and interpretation, should correspond in

fundamental point, at least, with its application in the jurisdiction from whence it was taken. It must be taken as the intent of the legislature that the practical application of those provisions of the Code of Civil Procedure relating to guardianship should conform in the main with the practice under the same statute in California. It is obligatory upon the judicial department to follow the intent of the legislative branch of the Government in the application of laws. It is but stating the proposition in different terms to say that our present law of guardianship does not contemplate a reference by the court

340 to the provisions of the Civil Code relating to the patria potestad in resolving the question of whether a guardian ought to be appointed for a minor child whose parents or one of them is living. That the fact of the child's having a parent or parents may be taken into consideration by the court in determining the question may not be disputed. Section 553, as we have seen, recognizes the closest bond of kinship known to nature as a sufficient guaranty for the faithful care of the child's person. But such is not the case with the child's property. The law says that as to the administration of the estate of a minor child a parent shall only have a preferential right; and, when the parent does secure an appointment as guardian of a child's estate, he must qualify as any stranger would, and perform the same duties and accept the same compensation as a stranger. Can anything be more inconsistent with the right which the patria potestad grants the parent of administration and usufruct in the child's property by mere operation of law, and requiring neither appointment nor supervision by the court (except in a very limited sense, Civil Code, art. 160; Mort. Law, arts. 200 and 205)? The truth is that the patria potestad and the present law of guardianship cover the same subject, i. e., the custody and care of the person and property of minor children whose parents or one of them is living. By this, of course, we do not mean to restrict the new law to this class of incompetents alone. The provisions of the two laws are entirely repugnant to each other; they are totally irreconcilable if any proper respect be had for the language used in the latest law, and the evident intent of the legislative department in enacting it. The former must, therefore, yield to the latter.

341 The provisions of the new code of procedure on guardianship being applicable to minor children whose parents or one of them are still living, it is clear that those articles of the Civil Code relating to emancipation of minors by their parents are also, partially at least, repealed. By reference to these articles (314-319), it will be noted that by emancipating his child the parent surrenders to it the right to the usufruct and administration of his property. This, of course, is based upon the a priori condition of the law of patria potestad that the parent has the usufruct and administration of the child's property to give, which, as we have seen, he no longer has. Not having the right in the child, the formal emancipation of a minor child by the parent cannot now have the effect prescribed in articles 314-319 of the Civil Code. For, were this power of emancipating his minor child still retained by the parent, the latter could, by the exercise of it, deprive the court guardian of the administration

and control of the estate, of, in other words, the court proceedings with reference to the person and property of the minor child would, by the parent's act, be annulled.

We have now determined that the right of administration and usufruct of the child's property, granted by the former law to the parent, and the right of the latter to emancipate his child in accordance with the provisions of article 314 et seq., of the Civil Code, whereby the child takes over the administration and usufruct of his own property, have been repealed by the chapter of the new code of procedure relating to guardianship. But we deem it necessary, before proceeding further, to say that there are some provisions of the *patria potestad* which are not necessarily in conflict with

342 the new code of procedure. Parents are never deprived of the custody and care of their children except for cause. This is a universal rule of all systems of law, as beneficial to the child as it is just to the parent. Indeed, it might well be said to belong to the realm of natural justice. Happily, however, it is unnecessary to resort to generalities to show that the *patria potestad* of the Civil Code with respect to the persons of minor children is not inconsistent with the new law of guardianship. Section 553 of the new code provides that the father and the mother, in the order named, are considered the natural guardians of the child and as such entitled to the custody and care for the education of the minor. Chapter 41 is devoted to "adoption and custody of minors." Section 768 provides that the effect of adoption shall be to free the child "from all legal obligation of *obedience*" to his parents. From section 770, it seems clear that parents may not be deprived of the *custody* of their children because of unworthiness except after hearing. Section 771 provides that in the case of spouses living separate or divorced the court shall determine which of them shall have "*the care, custody and control of the offspring.*" The italicized words clearly acknowledge a right in the parents, under normal conditions, to exercise parental authority over the persons of their minor children.

But so far as the property of such children is concerned, the rights of the parent must be subordinated to the efficient working of the new law of guardianship. It is not, of course, true that a guardian for the property of the minor child will be appointed in all cases. It is always within the discretion of the court to do so. We apprehend that no proper case for such an appointment would be

343 presented to the court where a child's work or industry were productive of small earnings which would necessarily be consumed in its own support, and which the parent is required to give. The same might possibly be said with reference to property acquired by the child for a good consideration. The purpose of the law is to protect the estate of the child from the avarice of designing persons be they whom they may. It would hardly seem necessary to carry this doctrine to the point where the parent having the custody of the person of the minor child should not be entitled to its earnings or that portion whereof necessary for its support as compensation for the care and support which such parent is called upon to give. We do not think the repeal of that branch of the *patria*

potestad relating to the child's property carries with it any such a consequence.

But there are other questions the solution of which may be difficult if they are presented to the courts in the present state of the law. Under the Civil Code, a child might be emancipated formally (art. 315) or impliedly (art. 160) by the parent. In either case his contracts with third persons were binding upon him, except when they tended to divest him of his real property. Formal emancipation, as we have stated above, is no longer possible. Is implied emancipation still permissible? If so, to what extent may such a child validly bind himself by contract? May children living apart from their parents and supporting themselves recover money paid for necessities? What control have such children over their own property acquired by their own work or industry or for a good consideration? These are questions which we do not find it now necessary to consider.

344 Before proceeding to determine what effect the new law of guardianship had upon pending cases of patria potestad it seems well to note the effect upon the status of a child emancipated by the concession of the parent exercising the patria potestad. Article 167 provides that the patria potestad terminates by the emancipation of the child. Article 314 provides that emancipation takes place (a) by marriage; (2) by majority; and (3) by the concession of the father or mother exercising the patria potestad. It was by this latter method that Isabel Palet terminated her patria potestad over the appellant children. Article 317 provides that upon emancipation by concession of the parent the child is qualified to control his person and property as if of age; with the exception that until he attains his majority, he cannot borrow money nor encumber or sell his real property without the consent of the parent, or, in the absence thereof, of a guardian. As we have said, that code imposed upon children whose parents or one of them was living the patria potestad in lieu of guardianship imposed upon all other incompetents. By mutual consent of the parent exercising the patria potestad and the child subject to it, it could be terminated after the child reached the age of eighteen, in which case there was substituted therefor a veto power, exercised by the parent, upon the child's capacity to borrow money and to sell or encumber his real property. Under this arrangement, whether the parent emancipated his child or continued exercising the patria potestad over it until it reached the age of majority, the child was subject to a continuing status of dependency upon the parent until it became of age. The parent was permitted to exercise a limited control over the property of his

minor child after having emancipated it for the same reason
345 that he was permitted to exercise patria potestad before its emancipation. That is to say, the parental love and affection was deemed a safeguard against covetousness, and an incentive to watchfulness over the child's property equivalent to those legal safeguards exacted of an ordinary guardian. In other words, the relation between the parent and the child was deemed a sufficient reason

for intrusting to the former those duties which would have devolved otherwise upon a guardian. In point of strict fact, it would seem that, instead of the patria potestad being terminated by the parent's emancipating his child, there was still a remnant of it left in the parent's absolute veto of the child's right to borrow money or dispose of or encumber his real property. The law gave no sanction to such contracts when entered into without the parent's consent. The parent's control over the estate of his minor child before as well as after emancipation was deemed a sufficient substitute for guardianship, properly so called. This control or supervision of the parent over his minor child's estate began with the occurrence of a mere fact—the acquirement of property by the child, and it terminated with a fact—the complete emancipation (by majority) of the child. It required no judicial sanction for its beginning or ending. While it might be modified by the child's emancipation at the age of eighteen, it was not extinguished. It was a legal status created between the parent and the child continued throughout the infancy of the latter. We conclude, therefore, that the emancipation of the appellant children in 1903 is no sufficient reason, in and of itself, for holding that a statutory guardian ought to have been forthwith appointed under

346 the provisions of the new Code of Civil Procedure. There was no such break in the duties of the parent, the inexperienced child was not so utterly thrown upon the tender mercies of a selfish world as to require the intervention of a guardian appointed under the new law. Unless the new law of guardianship abrogated the rights of those parents administering the estates of their minor children under the patria potestad at the time it went into effect, it did not abrogate the rights of those same parents to subsequently emancipate such children under the provisions of articles 314-317 of the Civil Code. The parent's right of emancipating his child depended upon the antecedent right to exercise the patria potestad. The former was necessarily a consequence of the latter, and if the parent exercising the patria potestad at the time the new law took effect was not molested, neither was he deprived of the right to subsequently emancipate his child and thereby confer upon the latter capacity to contract with third persons.

Having determined that the present Code of Civil Procedure has repealed the patria potestad with reference to the child's estate and the power of emancipation by concession of the parent, the question remains, Does the new order of things apply to a parent who assumed charge of the property of her minor children in 1895? If it does, then the execution of the mortgage which the appellant children now seek to have annulled was an act properly devolving upon a guardian appointed by the court, who must have asked for and received the court's approval to enter into the said contract before it could bind the property of the children. On the other hand,

347 if the new law does not affect estates of minor children whose parents assumed charge thereof prior to the enactment of the new code, the validity of the mortgage must be determined by the provisions of the Civil Code. To state the proposition in an-

other form. Were all parents administering the property of their minor children by virtue of the provisions of the Civil Code on October 1, 1901, (the date the new law of guardianship became operative), ipso facto deprived of their control over the estates of their minor children? Did it immediately become necessary to bring these estates under the operation of the new law?

Under cover of procedure a radical departure from the substantive law had been made. The Civil Code provided a method of conserving the estates of minor children through the agency of their parents, without the necessity of judicial intervention (except in a very limited sense). It had, furthermore, endowed the minor child after emancipation by concession of the parent with the capacity to freely contract with third persons, requiring only the parent's approval of contracts in alienation of or encumbering the child's real property and for the borrowing of money. And lastly, it gave to third persons entering into contracts with emancipation children assurance that such contract were binding and valid upon the children. The new law of guardianship practically placed the parent in the position of a stranger to the child's estate, giving him only a preferential right, other things being equal, to an appointment as guardian of the estate. It brought the child's estate under the control of the court. And finally, the incapacity of the children between the age of 18 and the age of majority to contract with third persons could not be modified in the least by mutual consent of the parent and child.

and, hence, contracts made in that manner were no longer
348 binding upon the child. The change was abrupt, it was entire, and, unfortunately, it was not specified but implied.

Whether the change was casual or intended, it is unnecessary to determine. That it occurred is the unavoidable conclusion. Under these circumstances the inquiry naturally arises, Does the new law contain any saving provision excepting from its operation those estates of minor children which were being administered either by the parents under the patria potestad or by the children themselves under the provisions of the Civil Code relating to emancipation by concession of the parent? That the authors of the new code recognized a conflict between the new law of guardianship and the existing system of caring for the estates of incompetents is evident from an examination of section 581 thereof. That section reads:

Pending guardianships to proceed in accordance with Spanish law, with certain exceptions.—All proceedings in cases of guardianship pending in the Philippine Islands at the time of the passage of this Act, shall proceed in accordance with the existing Spanish procedure under which the guardians were appointed: Provided, nevertheless, That any guardian appointed under existing Spanish law may be removed in accordance with the provisions of section five hundred and seventy-four of this Act, and his successor may be appointed as therein provided, and every successor to a guardian so removed shall, in the administration of the person or estate, or either, as the case may be, of his ward, be governed by the provisions of this Act.

This section saves from the operation of the new act all proceed-

ings in cases of guardianship pending in the Philippine Islands at the time of its passage. Does this refer to and include the administration of the property of minor children by their parents under the provisions of the Civil Code? If it does, then the authority which Isabel Palet exercised over the property of her minor children was not affected by the enactment of the new code of procedure, and she was at liberty to proceed as she did, in accordance with the provisions of the Civil Code, to emancipate her children by a formal declaration, and they thereupon acquired the capacity extended to emancipated children by article 317 of that code.

Examining the section with a view to ascertain the mere literal meaning of the language used, we are at once met with the argument that it refers only to cases of guardianship and that the parent administering the estate of his minor child in accordance with the Civil Code is not a guardian, either under the Civil Code or as that word is used in the Code of Civil Procedure. Hence, according to this argument, the *patria potestad* and the ancillary right of emancipation pertaining to the parent are not saved from the operation of the new law by section 581. But we are of the opinion that this argument amounts to a play upon words rather than to a reasonable interpretation of the section. In the first place, the question arises, In what sense were the words "guardia" and its derivative, "guardianship," used in section 581? Were they used in the same sense as in the preceding sections of Chapter 27 of the new act, the chapter prescribing the new law of guardianship? If so, they include the administration of the estates of all incompetents, including infants whose parents are living, for that is the design of the new law of guardianship. If the argument under examination is sound, it must be held that the authors of the code descended from this all-inclusive meaning of the word when they finally came to the consideration of what ought to be saved, and attempted to deal only with guardianship as that term is understood in the civil law. A careful examination of the entire act, in the light of the conditions under which it was passed, reveals convincing evidence that the authors of the code attempted no such nicety of expression in section 581.

With the advent of American sovereignty in 1898 there came and influx of American ideas of administration of justice. A new code of criminal procedure was enacted under authority of the military governor in 1900, and early in 1901 the First Philippine Commission undertook as one of its first tasks the reorganization of the courts and the enactment of a new code of civil procedure. The new legislation did not purport to be an amendment of the Spanish law on the subject. On the contrary, it was a virtual substitution of the one for the other. The various sections of the Code of Civil Procedure were, practically speaking, adopted without material alteration from one or another of the states of the American Union. Both executive and legislative affairs were, at the time, being discharged by a single body—the Philippine Commission—and the pressure of business afforded little opportunity or time to carefully survey the field covered by the new legislation and discover how much of

the former law would be affected by the new act. The only method that could be safely followed, under the circumstances, was to ruthlessly brush aside the Spanish law and inaugurate the new in the form which had withstood the test of time in the United States, and leave the extent of the change to be ascertained by the courts in the actual administration of the new code by determining implied repeals. Hence, the authors of the new code expressed themselves entirely in terms of American law. Instances pointing to this fact are numerous. Thus "embezzlement" in section 30; "adverse possession" in section 41; "battery" and "slander" in section 43; "corporation" in section 198 and various other sections; many of

351 the terms used in the chapter on evidence; "residuary legatee" in section 644; "heir" as it is used in various sections of the probate procedure; all show quite clearly the extent to which the authors of the new code held to the technical terms of American law in compiling the new code. Bearing in mind such extreme instances of the terms in which the authors of the new code expressed themselves, is it possible that they stopped to make a distinction in section 581 between the administration of a minor's estate by his parent and the administration of the estates of all other incompetents? They knew that the system they were introducing was applicable to the estates of all incompetents. The fact that they inaugurated this new system of caring for the estates of incompetents clearly shows that they disapproved, without distinction, of all the existing law on that subject. The administration of the estate of a minor by his parent was impliedly repealed by the new law. *It is not reasonable to suppose that the saving clause, which it was deemed desirable to insert in the new law, was intended, by implication, to include those pending cases of that nature? A saving clause is enacted to save something which would otherwise be lost. When existing procedure is altered or substituted by another, it is usual to save those proceedings pending under the old law at the time the new law takes effect. This was the purpose of section 581. It was designed to save undisturbed all pending proceedings in guardianship cases; that is, those proceedings already begun and still unfinished, which would otherwise have been affected by the new law, were to be allowed to continue to determination in accordance with the old*

352 law. There was no reason for allowing guardianships, so called under the civil Code, pending at the time the new code went into effect, to continue undisturbed by the new law, while parents who were administering the property of their minor children under the same code must submit to the new regulations. Both were equally favored institutions under the civil law, and both were equally disapproved by the authors of the new code.

But it is said that those pending cases wherein the parents were administering the property of their minor children do not come within the saving provisions of section 581 because that section refers only to pending cases of guardianship wherein the guardians were appointed in accordance with the Spanish procedure; that is, guardians who were subject to removal by the

court in accordance with the provisions of section 524 of the new code, and whose successors could be appointed as therein provided.

Guardianship, so called under the Civil Code, was conferred (a) by will; (b) by law; and (c) by the family council; Guardians thus designated were removable generally by the family council. The right to administer the property of an infant child was conferred upon the parent by law. Under article 169 of the Civil Code the parent lost the authority over his minor child (1) by a final judgment in a criminal case; and (2) by a final judgment in a case for divorce. And under article 171 the courts had the power to deprive parents of the parental authority or suspend the exercise thereof when they treated their children with excessive cruelty, or if they gave them corrupting orders, advice, or examples. The courts could also deprive the parents either totally or partially of the usufruct of the child's property.

353 All pending cases of testamentary guardianships, legitimate guardianships, and guardianships conferred by family councils fall within the provisions of section 581. The guardians in these cases may be removed by the court in accordance with the provisions of section 574, and their successors appointed as therein provided. What sound reason can be advanced for excluding those pending cases wherein the person and property of the minor child were being cared for by the parent under the patria potestad? The patria potestad was conferred by law. In each instance the law specifically designated in their order the persons who were entitled to the care and custody of the child and the administration of its property. In those particulars both are the same. But how may a court, under the authority conferred upon it by section 581, remove a parent who is exercising the patria potestad over the person and property of his minor child and appoint a guardian in accordance with the provisions of section 574 of the person and property of such child?

The question might be answered by pointing out that if the probate court was duly informed that a parent had lost the authority over his minor child, or had lost the parental authority over both the child and its property as provided in articles 169 and 171 of the Civil Code, it could proceed to appoint a regular guardian for both the person and property of the child. It may be true that the probate court would not have the power to deprive a parent who was exercising the patria potestad over the person and property of his minor child of either the possession of the child or its property, and appoint a guardian to take charge of either or both. This, if true, is not,

354 in our opinion, a sufficient reason for excluding from the operation of section 581 those cases pending wherein the affairs of minor children were being administered by their parents in accordance with the former law.

In the final analysis, it seems that protection from the effects of the new law is claimed for the Civil Code guardian because he was exercising his duties *eo nomine*, while the parent and parties dealing with that parent are to be denied that protection because the parent acted under the patria potestad or under those provisions of the code relating to emancipation of the child by concession of the parent.

The first premise of the plaintiffs' case rests upon the proposition that the parent's right to administer the property of his child has been abolished by the new law of guardianship. This conclusion is reached by determining that this right and the present law of guardianship cover the same subject, that they are repugnant to each other, that they cannot stand together, and that, theretofore, the latter law repeals the former. The second premise of the plaintiff's case is that pending cases of patria potestad are not within the saving clause of section 581. This conclusion is reached by disregarding the substance of the two methods of caring for the minor children and their property, and clinging to the word forms "patria potestad" and "guardianship". In the first premise the intent of the law is the determining factor. On the second premise, the intent is disregarded.

But it is asked why the plaintiffs were not given the same status when they were emancipated in 1903 as any other incompetents whose Civil Code guardians had died, resigned, or been removed, inasmuch as the plaintiffs and their mother occupied the same
355 position for the purpose of bringing them within the saving provision of section 581 as a Civil Code guardian and his wards. We have attempted to show that the emancipation of the plaintiffs was not an interruption of the dependency of the child upon the parent, that the parent did not thereby divest herself of control over the child's property. Hence, there could not follow any such hiatus in the protection afforded the child as occurs by resignation or removal of a guardian so called under the Civil Code. The difference between the status of the two groups of children is clear and fundamental.

We therefore conclude that it was intended by the saving provision of section 581 to withhold the application of the new law from all those cases which were already being taken care of under the provisions of the Civil Code, and that the plaintiffs had full power to charge their estate with the mortgage which they now seek to disaffirm.

It is urged finally that admitting all else, emancipation of the plaintiffs could not be valid because the admitted emancipation was not contained in a public instrument, as required by article 316 of the Civil Code. This article provides that the emancipation by the concession of the father exercising the patria potestad, shall be granted by a public instrument or by an appearance before a municipal judge. In the case at bar the emancipation documents were acknowledged of duly executed before a notary public in 1903. The notary public exercised his authority not by virtue of the Spanish law, but under authority of Act No. 136.

A document acknowledged before a notary public, in accordance with the provisions of an Act of the Philippine Commission, is a public instrument within the meaning of article 1924 of the
356 Civil Code. (*Gochico vs. Ocampo*, 7 Phil. Rep., 15; *Soler vs. Alzoua*, 8 Phil. Rep., 539; *De la Rama vs. Robles*, 8 Phil. Rep., 712; *McMicking vs. Kimura*, 12, Phil. Rep., 98). The phrase

referred to in article 1824 of the Civil Code and which was brought in question in these cases reads: "In a public instrument"—"escritura publica". Exactly the same words, "escritura pública", are used in article 316. If a document which was acknowledged before a notary public appointed under an act of the Commission, was a public document within the meaning of that phrase in article 1924, it certainly must be held to be a public document within the meaning of that phrase in article 316, as both are exactly the same.

The conclusions we have arrived at make it unnecessary to consider the ratification of the mortgage contract by the plaintiff, Joaquín Ibañez de Aldecoa, after having arrived at the age of majority. Nevertheless, we might say that we fully agree with the holding of the trial court upon this point. Whether the plaintiffs were creditors or partners of Aldecoa and Company is likewise unimportant. Neither relation would prevent them in any way from guaranteeing the payment of the debt owed by the firm.

The judgment of the court below, in so far as it sustains the validity of the mortgage contract as to Joaquín Ibañez de Aldecoa, is affirmed. In so far as that judgment declares the nullity of the mortgage as to Zoilo Ibañez de Aldecoa, it is reversed, and the mortgage is hereby declared binding upon the latter.

No costs will be allowed in this instance.

Arellano, C. J., and Araullo, J., concur.

Johnson, J., dissents.

357 TORRES, J., concurring:

I concur in the admirable opinion of the majority of this court, and as it is a matter that concerns the personal rights and obligations of a family of Spanish nationality, some of the former having been exercised and the latter having been enforced in this country, wherein they are aliens, I think it necessary to set down as one more ground for decision in the present suit that the widow of the deceased Aldecoa, Dona Isabel Palet, and her children, Don Zoilo and Don Joaquín Ibañez de Aldecoa, being Spaniards born in what was then Spanish territory and the children of Spanish parents, brought along with them upon coming to these Islands the laws of their personal status with all the effects thereof, for by general agreement of civilized nations, wherein a compact of reciprocity has been established for the greater welfare of society and the benefit of their respective citizens, the personal status accompanies the individual who moves to a foreign country.

Man's activity is not limited and circumscribed within his native country. His manifold dealings with others some times impel him to leave it and settle in a foreign land, and as the laws of the other countries to which a person may move in search of work, of improvement or for other reasons are varied and diverse, it has been determined by general assent and common agreement among civilized nations that the laws relating to family rights and obligations, and the status condition, and legal capacity of the persons, accompany a person even when he moves to a foreign country; that he is wholly

bound to observe the laws of his native land, although he may reside in another and different country. It has been thus prescribed in article 9 of the Civil Code, under the provisions whereof the
 358 *citized on one nation, as his residence to these Islands, does not cease to be such by moving his residence to these Islands, and to that end the laws governing his personal status accompany him in his emigration because they are more suited to his personal affairs.*

Although under article 10 of the same Code personal property is subject to the laws of the nation of the owner thereof and real property to the laws of the country in which it is situated, still the legal and the testamentary successions, both with respect to the order of succeeding as to the extent of the rights thereof and the intrinsic validity of their provisions, are regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situate.

The positive right in connection with the principle of nationality and personal status has been upheld by the Spanish supreme court even before the enforcement of the Civil Code, in its decision of November 6, 1867, wherein the doctrine is laid down that in the absence of a special treaty the personal status must govern the acts that concern the alien's person in civil matters, being subordinated to the laws in the country of which he is a subject and decisive for him of all the questions of fitness, capacity, and personal rights.

In another decision, January 29, 1875, it is stated that the personal law for the individual is the law of the country to which he belongs, that it accompanies him wherever he may move and regulates his personal rights, his capacity to transmit by testate or intestate succession and the governance of his marriage and family.

And in the decision of January 13, 1885, the following was
 359 *established: It is a principle of private international law that status and capacity accompany a person abroad and the personal laws of his own country must be applied to him.*

The exercise of the right of parental authority, based on the provisions of article 154 of the Civil Code, is one of the rights governed by the laws included in the personal status, to the effect that the father, or in his absence the mother, even though he resides abroad with his children, does not lose such right but carries it along with him to the country where he resides.

The right of granting emancipation on the part of the father or mother who exercises parental authority is another of the rights that he carries with him to the foreign country wherein he resides, because it is likewise included in the personal status and accompanies him even to the country in which he intends to reside. (Arts. 314-319 Civil Code).

On these grounds there can be no question that the widow of the deceased Aldecoa, Isabel Palet, exercised parental authority over her children had by her deceased husband Aldecoa and availed herself of a perfectly legal right, supported by the regulations of their personal status as Spaniards, in granting emancipation to her sons Zoilo and Joaquin, over 18 years old, and in giving them her consent

so that they might encumber their respective shares in realty or property which they had inherited from their deceased father, for the purpose of maintaining the credit enjoyed by the commercial firm entitled "Aldecoa and Company," and to avoid a premature and unnecessary liquidation at the instance of the Hongkong Bank.

360 MORELAND, J., concurring:

I agree with the judgment in this decision, but reserve my opinion as to the grounds on which it is based and the reasoning adduced in support thereof.

Judgment Modified.

The parties were notified of the above decision on March 24, 1915, and on March 27, 1915, the plaintiffs and appellant filed the following exception.

(Title of the Cause Omitted.)

Now come plaintiffs through their undersigned counsel and file their exception against the decision rendered by this Honorable Court in the above entitled case and ask that this exception be duly recorded to the legal effects thereof.

Manila, March 27, 1915.

(Sgd.)

ALFREDO CHICOTE.

Received copy, March 27, 1915.

GILBERT, HAUSERMANN, COHN &
FISHER,

(Sgd.) p. p. CHARLES C. COHN.

On March 29, 1915, plaintiffs and appellants asked for a rehearing and a reconsideration of the decision rendered by the Supreme Court, which was denied by the Supreme Court who on denying said petition rendered the following additional decision:

361 (No. 6889, August 26, 1915.)

JOAQUIN IBAÑEZ DE ALDECOA Y PALET et al., Plaintiffs and Appellants,

vs.

THE HONGKONG AND SHANGHAI BANKING CORPORATION et al., Defendants and Appellees.

Syllabus.

1. Parent and Child: Emancipation: Conflict of Interests.—Under the Civil Code a formally emancipated child has full capacity to control his own person and property save only the express limitations enumerated in article 317. Hence conflicting interests of the

parent and child do not of them selves require, as in the case of minor children not emancipated, the appointment of a next friend.

2. Contracts: Statement *Lf* False Considerations.—Plaintiffs became sureties for a debt owing by a firm of which they believed themselves to be partners. It later turned out that they were creditors and not partners of the said firm. In either case the plaintiffs were interested in tiding the firm over its financial difficulties and preserving its business intact. Held, That there was a valid and subsisting consideration for the mortgage contract.

Appeal From a Judgment of the Court of First Instance of Manila.
Crossfield, J.

The facts are stated in the opinion of the court.

Alfredo Chicote for plaintiffs.

Haussermann, Cohn & Fisher for defendants.

TRENT, J.:

A motion for rehearing has been made in this case. It is urged that our decision overlooks the fact that the plaintiff children are citizens of this country, and, hence, governed by the laws thereof. Without determining the political status of the plaintiffs, we have at some length endeavored to show that, clothing them with 362 Philippine citizenship, the present law of guardianship, as contained in our Code of Civil Procedure, does not apply to them by reason of the saving provisions of section 581. The concurring opinion assumes their Spanish citizenship, and, hence, their amendability to the laws of Spain. We might add that the admirable briefs of counsel for the defendant bank contain lengthy and strong arguments to the effect that these children are not citizens of the Philippine Islands, but citizens of Spain. If this be true, then it may be that this case ought to be decided in accordance with the provisions of the Spanish Civil Code, as stated in the concurring opinion. We purposely avoided a discussion of the political status of the plaintiffs, basing our decision entirely upon the existing laws of these Islands, as we understand them.

It is urged that the emancipation of the plaintiffs could not have been validly made for the reason that it was not recorded in a public document. This point was raised in the briefs and has been already answered in our decision.

It is next urged that the mortgage is invalid as to the plaintiffs because the mother's interests as a partner of the firm were directly opposed to the children's interests. Article 165 of the Civil Code is quoted in support of this contention. This article is clearly limited by its own words to children "not emancipated." Article 317 confers full capacity upon an emancipated child to control his person and property with the limitations stated. One of these is the encumbrance of his real property, which may not be done without the

consent of the parent or, in his or her absence, of the tutor.

363 The resolutions of the Dirección General de los Registros (Nov. 4, 1896; Jan. 7, 1907; and Jan. 30, 1911) distinctly hold that a formally emancipated child may participate in the division of an inheritance with the parent's consent, even when the latter is also interested. Certainly, the division of an undivided inheritance between the parent and the emancipated child is as strong a case of conflicting interests as is the case at bar. Manresa endeavors to apply article 165 to article 317 by analogy, and cites the resolution of November 19, 1898, in support of this contention. That case, however, was not one of formal emancipation, but of emancipation by marriage, and the land court expressly held that it was governed by articles 315 and 59 of the Civil Code and not by article 317. The case of November 14, 1896, one of formal emancipation and cited above, was expressly distinguished in the resolution of November 19, 1898, upon which Manresa relies. For that matter, article 165 is nowhere cited or discussed in the last mentioned resolution. We do not feel authorized to add to those limitations upon the capacity of a formally emancipated child in view of the decisions of the highest authorities on the point to which we have referred above.

It is urged, lastly, that the mortgage contract is void as to the plaintiffs by reason of a lack of consideration. It is asserted that they executed the mortgage under the impression that they were partners in the firm of Aldecoa and Company, when, as decided by a final judgment of the Court of First Instance, they were not such partners. Article 1276 of the Civil Code provides:

364 A statement of a false consideration in contracts shall render them void, unless it be proven that they were based on another real and licit one.

By the same judgment which released the plaintiffs from their obligations as partners of the firm, they were declared creditors of that firm. Here was a valid and subsisting consideration for the mortgage; the creditors' desire to preserve the firm intact in the hope of recovering from it in due course their total credits. It seems clear that it was the object of the mother and the plaintiff children to thus save the business, and it matters little that the plaintiffs were creditors and not partners.

We see no reason for disturbing the decision heretofore rendered. Motion denied.

Arellano, C. J., Torres and Araullo JJ., concur.

Motion denied.

The parties were notified of the above decision and thereafter, on the 28th day of August, 1915, plaintiffs and appellants filed the following exception:

(Title of the Court and Cause Omitted.)

Now come plaintiffs and appellants in the above entitled case and file their exception against the resolution of this court denying the new trial and the reconsideration of the judgment prayed for by

these appellants and at the same time announce their intention to appeal from said decision before the Supreme Court of the United States through the corresponding bill of errors.

Manila, August 28, 1915.

365

(Sgd.)

ALFREDO CHICOTE,
ANTONIO M. OPISSO,

20 Plaza Moraga, Binondo Manila.

Received copy this 28th day of August, 1915.

GILBERT, COHN & FISHER,
*Attorneys at Law for the Hongkong
and Shanghai Banking Corporation.*

On the 28th day of August, 1915, final judgment was entered in the supreme court in the above entitled case as follows:

(Title of Court and Cause Omitted.)

The court having regularly acquired jurisdiction for the trial of the above entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record its decision and order for judgment having been filed on the 23rd day of March, 1915.

By virtue thereof it is hereby adjudged and decreed that the judgment of the court of first instance of Manila, dated the 27th of January, 1911 and from which the above entitled appeal taken be and the same is hereby affirmed in so far as it sustains the validity of the mortgage as to Joaquin Ibañez de Aldecoa and reversed in so far as it annuls the mortgage in regard to Joaquin Ibañez de Aldecoa that mortgage being hereby obligatory for the last named one without any official finding as to the costs in this instance.

[Seal Corte Suprema Islas Filipinas.]

(Sgd.)

V. ALBERT,
*Clerk of the Supreme Court of the
Philippine Islands.*

A true copy: V. ALBERT, Clerk Supreme Court.

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Thereafter, and on the 30th day of July, 1915, counsel for plaintiff and appellant filed the following petition for an appeal to the Supreme Court of the United States:

367 Clerk's Office, Supreme Court, Philippine Islands. Filed Oct.
4, 5, 1915.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

ZOILO IBAÑEZ DE ALDECOA et al., Plaintiffs and Appellants,
vs.
THE HONGKONG AND SHANGHAI BANKING CORPORATION et al., De-
fendants and Appellees.

[Seal Claudio R. De Luzuriaga, Notario Público, Manila, I. F.]

Petition for Appeal to the Supreme Court of the United States.

To the Honorable Chief Justice or any Associate Justices of the
Supreme Court of the Philippine Islands:

The petition of Zoilo Ibañez de Aldecoa y Palet and of Joaquín Ibañez de Aldecoa y Palet, respectfully shows to this Honorable Court:

I.

That on the 29th day of August, A. D. 1915, the Supreme Court of the Philippine Islands rendered a final decree against these your
petitioners, in a certain cause wherein your petitioners were
368 plaintiffs and the Hongkong and Shanghai Banking Corporation and Isabel Palet y Gabarró were defendants; in which cause your petitioners sought to cancel a certain instrument of mortgage executed by these petitioners jointly with the defendants Aldecoa and Company and Isabel Palet y Gabarró, in favor of the other defendant, the Hongkong and Shanghai Banking Corporation, to secure what in the instrument was said to be a credit opened by the Hongkong and Shanghai Banking Corporation in favor of Aldecoa and Company, but in reality was an overdraft of Aldecoa and Company amounting to P475,000.00 Philippine Currency; and wherein your petitioners alleged as ground for their petition to have the said instrument of mortgage cancelled: a) that at the time of the execution of said instrument, your petitioners were minors, although their mother, the defendant Isabel Palet y Gabarró, had executed a certain document purporting to emancipate your petitioners, yet such document of emancipation was null and void, the same being in violation of the laws in force in the Philippine Islands, and she, the said defendant Isabel Palet y Gabarró executed said document without authority, capacity or permission therefor; b) that at the time your petitioners signed the said instrument of mortgage, they acted in the belief that they were members of the firm

of Aldecoa and Company, a fact which was not true; *c*) that the plaintiffs, your petitioners, were deceitfully induced by the manager of Aldecoa and Company and by the manager of the Hongkong and Shanghai Banking Corporation to sign and execute said instrument of mortgage by means of certain false, cunning and deceitful statements, more amply set forth in the complaint filed in said cause,

the only purpose of said statements and representations being
369 to induce these plaintiffs to error and obtain their consent;

d) that there was an entire lack of consideration for the execution of said instrument of mortgage in so far as these plaintiffs was concerned, and *e*) that at the time of the execution of said instrument of mortgage by these plaintiffs, the defendants, each and all of them well knew that the consent which these plaintiffs gave to said instrument was null and void, and each and all of the said defendants knew all the facts hereinbefore set forth. And wherein these plaintiffs prayed that said document be declared null and void in so far as these, your petitioners, are concerned, and that your petitioners and their property be exempted from the mortgage and from any liability for any debt contracted by Aldecoa and Company by virtue of said instrument; and finally, that they should be granted any other remedy which might be deemed just and equitable. And wherein the Hongkong and Shanghai Banking Corporation answered denying generally and specifically each and every one of the allegations contained in the aforesaid complaint. And wherein the defendant Isabel Palet y Gabarró alleged that if she had executed the letters of emancipation in favor of her sons (your petitioners) she had done so in the belief that it was an act permitted by the laws of the Philippine Islands, but being afterwards informed to the contrary she believed and alleged that the documents of emancipation by her executed in favor of her sons (your petitioners) were not letters of emancipation according to law; that by reason of a certain letter received by said defendant Isabel Palet y Gabarró, from the manager of Aldecoa and Company she, the said defendant Isabel Palet, fearing to see herself ruined,—she being

a member and general capitalist partner of Aldecoa and Company—
370 and fearing that your petitioners—whom she believed at that time to be members and general partners of said firm of Aldecoa and Company—would also be ruined by the threatened failure of said firm, unless the instrument of mortgage above referred to was executed in favor of the Hongkong and Shanghai Banking Corporation, and not being aware that her sons (your petitioners) were not members of Aldecoa and Company and being ignorant of the real condition of the affairs of Aldecoa and Company, and frightened by the letter which the manager of Aldecoa and Company had written her, she empowered her attorney-in-fact and representative in Manila to act in her behalf and give her children (your petitioners) her consent for them to execute said instrument, and that said consent was given by said defendant under error and by reason of certain facts she was made to believe and did believe were true, which facts are more fully set forth in the answer filed by said defendant in the said cause; said defendant Isabel

Palet also alleged that "if she *should* had known at such time that the then manager of Aldecoa and Company, sought to conceal from the partners of Aldecoa and Company frauds committed by him and his co-managers in said Company; if she had known that the statements contained in the letter which said manager had written to her were exaggerated and cunning; if she had known that her children (your petitioners) were not partners of the firm of Aldecoa and Company and that their (your petitioners') property did not run any risk of disappearing or being ruined, she would not have acted as she did, nor would she have consented that her children should mortgage and encumber their real estate by virtue of said instrument of mortgage hereinbefore referred to"; and said defendant Isabel Palet prayed that the remedy asked for in your petitioners' complaint be granted.

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II.

That after trial was had in the said cause, the Court of First Instance of the City of Manila, rendered judgment in favor of your petitioners declaring that the instrument of mortgage referred to was null and void and ordering that the Registry of the mortgage of your petitioners' property be cancelled.

III.

That said judgment was set aside on motion by counsel for the Hongkong and Shanghai Banking Corporation who asked that a new trial be granted on the ground of newly discovered evidence purporting to show that one of your petitioners had ratified the said instrument of mortgage after attaining his majority; and although counsel for your petitioners objected to the motion, alleging that such evidence was not "newly discovered" but that had been all the time in the hands of said counsel for the Hongkong and Shanghai Banking Corporation and that said counsel knew of the existence of said document before the trial of the said cause, the Court of First Instance of the City of Manila reopened the case, and after new trial rendered a new judgment whereby the complaint was dismissed as to your petitioner Joaquin Ibañez de Aldecoa and the instrument of mortgage was declared valid as to him, but not as to your other petitioner Zoilo Ibañez de Aldecoa, said instrument being declared null and void in so far as your last petitioner was concerned.

IV.

That upon appeal to the Supreme Court of the Philippine Islands, the judgment rendered by the Court of First Instance was affirmed as to your petitioner Joaquin Ibañez de Aldecoa and reversed as to your petitioner Zoilo Ibañez de Aldecoa, the Supreme Court of the Philippine Islands adjudging and decreeing that the mortgage executed by virtue of the instrument hereinbefore referred to was valid and binding upon both of your peti-

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tioners, said decision being rendered by a majority of the justices of said Supreme Court, justice E. Finley Johnson dissenting and justice Sherman Moreland concurring in the result but reserving his opinion as to the grounds in which the decision was rendered and the reasoning adduced in support thereof; as it will appear by reference to the record and proceedings in said cause.

V.

That the said Supreme Court is the highest Court of the Philippine Islands in which a decision can be rendered and had.

And your petitioners conceiving themselves aggrieved by said decree of the Supreme Court of the Philippine Islands made and entered on the 29th day of August, A. D. 1915, in the above entitled case, as hereinbefore alleged, do hereby appeal from said decree to the Supreme Court of the United States of America, under Section 10 of the Act of Congress of July 1st 1902, entitled "The Philippine Bill," because the value in controversy exceeds the sum of Twenty Five Thousand (\$25,000.00) dollars, currency of the

United States, as appears from the affidavit of the undersigned, filed herewith and made part hereof; and your said
373 petitioners pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers of evidence upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States of America.

Manila, September 27, 1915.

ANTONIO M. OPISSO,
Attorney for Petitioners.

20 Plaza Moraga, Manila.

UNITED STATES OF AMERICA,
City of Manila, Philippine Islands, ss:

Antonio M. Opisso, being duly sworn, deposes and says:

That he is the attorney for the appellants in the above entitled cause.

That the value of the controversy in the said cause, exclusive of all costs, exceeds the sum of \$25,000.00, United States Currency.

ANTONIO M. OPISSO.

Subscribed and sworn to before me this 27th day of September, A. D. 1915. Affiant exhibited his personal cedula No. F. 3769, issued by the Collector of Internal Revenue at Manila, the 7th day of January, 1915.

[Seal Claudio R. De Luzuriaga, Notario Público, Manila,
I. F.]

CLAUDIO R. DE LUZURIAGA,
Notario Público.

Mi nombramiento expira el 31 de Diciembre de 1916.
Reg. Not. No. 237. Fol. 55.

374 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

ZOILO IBAÑEZ DE AL DECOA Y PALET et al., Plaintiffs and Appellants,
versus
THE HONGKONG AND SHANGHAI BANKING CORPORATION et al.,
Defendants and Appellees.

Assignment of Errors.

Now come plaintiffs and appellants in the above entitled case, namely: Zoilo Ibañez de Aldecoa and Joaquin Ibañez de Aldecoa, and respectfully submit that in the record, proceedings and final judgment of the Supreme Court of the Philippine Islands in the above entitled case, there is manifest error in this, to wit:

I.

In not finding that the trial Court erred in granting the motion for a new trial and setting aside the first judgment rendered by said trial Court in this case.

II.

In failing to find that the trial Court erred in finding that plaintiff Joaquin Ibañez de Aldecoa had ratified the deed of mortgage after he had attained majority.

III.

375 In stating that the new law of guardianship, as contained in the Code of Civil Procedure promulgated in 1901, did not abrogate the rights of those parents who were administering the estate of their children under the right of patria potestas at the time it went into effect, to subsequently emancipate their children and confer upon them capacity to contract with third persons:

IV.

In establishing that a parent exercising the patria potestas over the property of his minor children was substantially, although not eo nomine, as nearly a guardian within the meaning of that word as used in the Code of Civil Procedure as the Civil Code Guardian.

V.

In not finding that the consent given by plaintiffs' mother to the plaintiffs to encumber their property could be given validly under the laws in force in the Philippine Islands.

VI.

In holding that the so-called deeds of emancipation executed by Doña Isabel Palet in favor of plaintiffs was a "public instrument" within the meaning of Art. 316 of the Civil Code.

VII.

In not finding that the consent given by Doña Isabel Palet was null and void under the provisions of Arts. 164 and 165 of the Civil Code.

VIII.

376 In failing to find that there was no consideration for the deed of mortgage executed by the plaintiffs in favor of the Hongkong and Shanghai Banking Corporation, but making, on the contrary, the following statement:

It is urged, lastly, that the mortgage contract is void as to the plaintiffs by reason of a lack of consideration. It is asserted that they executed the mortgage under the impression that they were partners in the firm of Aldecoa & Co., when, as decided by a final judgment of the Court of First Instance, they were not such partners. Article 1276 of the Civil Code provides:

"A statement of a false consideration in contracts shall render them void, unless it be proven that they were based on another real and licit one."

By the same judgment which released the plaintiffs from their obligations as partners of the firm, they were declared creditors of that firm. Here was a valid and subsisting consideration for the mortgage; the creditors' desire to preserve the firm intact in the hope of recovering from it in due course their total credits. It seems clear that it was the object of the mother and the plaintiff children to thus save the business, and it matters little that the plaintiffs were creditors and not partners.

IX.

In sustaining the decision of the lower Court as to plaintiff Joaquin Ibañez de Aldecoa.

X.

In reversing the decision of the lower Court as to plaintiff Zóilo Ibañez de Aldecoa.

XI.

In declaring the mortgage deed binding upon these two plaintiffs.

XII.

In denying the motion for a new trial.

Respectfully submitted.

ANTONIO M. OPISSO.

377 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. 6889.

ZOILO IBAÑEZ DE ALDECOA et al., Plaintiffs and Appellants,
 versus
 THE HONGKONG AND SHANGHAI BANKING CORPORATION et al.,
 Defendants and Appellees.

Know all men by these presents, that I, Zoilo Ibañez de Aldecoa, for myself and as assignee of all the right, title and interest of Joaquin Ibañez de Aldecoa, through my attorney-in-fact, Fernando Zobel y de Ayala, as principal, and Emilio Gonzalez La O and Fernando Zobel, as sureties, are held and firmly bound unto the Hongkong and Shanghai Banking Corporation in the sum of Five hundred dollars (\$500.00) United States Currency, to be paid to the said Obligee, its successors, representatives, and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 2nd day of October, A. D. 1915.

Whereas, the above named appellants have prosecuted an appeal in the Supreme Court of the United States, to reverse the judgment rendered in the above entitled action by the Supreme Court of the Philippine Islands.

378 Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void: otherwise to remain in full force and effect.

ZOILO I. DE ALDECOA,
 p. p. FERNANDO ZOBEL.
 EMILIO GONZALEZ LA O.
 FERNANDO ZOBEL.

Signed, sealed and delivered in the presence of:

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Emilio Gonzalez La O and Fernando Zobel, the sureties who executed the foregoing bond, being first duly sworn upon oath, each for himself, says: That he is a resident and property holder in the Philippine Islands, that he is solvent for the amount mentioned in said obligation as penalty, apart of all his debts and obligations and

of property subject to execution, and that he executed the foregoing bond as an act of his own free will and deed.

EMILIO GONZALEZ LA O.
FERNANDO ZOBEL.

379 Subscribed and sworn to before me, this 2nd day of October, 1915, by Emilio Gonzales La O and Fernando Zobel; both of them exhibiting to me their personal cedula Nos. F62697 and F5673 issued at Manila on the 23rd day of April and 11th day of January, respectively, 1915.

[Seal Antonio M. Opisso, Notary Public, Manila, Philippine Islands.]

ANTONIO M. OPISSO,
Notary Public.

My commission expires December 31, 1916.

Reg. Not. Nos. 252-3 Fol. 59.

380 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET, et al., Plaintiffs and Appellants,
versus

THE HONGKONG & SHANGHAI BANKING CORPORATION, et al., Defendants and Appellants.

Order.

The petition for an appeal to the Supreme Court of the United States, filed on October 4, 1915, in the above entitled case is allowed this 11th day of October, 1915, upon the filing by the plaintiffs and appellants of a bond with good and sufficient surety, in the sum of one thousand pesos (P1,000.00) Philippine Currency, to prosecute the said appeal to effect and answer all damages and costs if they fail to make good their plea. And in view of the facts in this case no supersedeas bond is required.

Let a certified copy of the records, testimony, stipulations and all proceedings herein be transmitted forthwith to said Supreme Court of the United States.

Manila, P. I., October 11th, 1915.

GRANT T. TRENT,
*Associate Justice of the Supreme Court
of the Philippine Islands*

Se remitió copia a los abogados Sres. Gilbert, Cohn & Fisher, Antonio M. Opisso.

381 UNITED STATES OF AMERICA, ss:

To the Hongkong & Shanghai Banking Corporation, et al., Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at Washington one hundred and twenty days from the date of this citation pursuant to an appeal duly allowed and filed in the Office of the Clerk of the Supreme Court of the Philippine Islands on the 11th day of October, 1915, in a cause wherein Zoilo Ibañez De Aldecoa, et al., plaintiffs and appellants and you are defendants and appellees, to show cause, if any there be, why the decree rendered against said plaintiffs and appellants as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 11th day of October, 1915.

GRANT T. TRENT,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

Service by copy admitted this 11 day of October, 1915.

GILBERT, COHN & FISHER,

F. A. FISHER,

Attorneys for the Defendants and Appellees.

rm.

382 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Copy.

R. G. No. 6889.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET, et al., Plaintiffs and Appellants.

versus

THE HONGKONG & SHANGHAI BANKING CORPORATION, et al., Defendants and Appellants.

Now come the plaintiffs and appellants in the above entitled case and respectfully state:

That on the 26 of August, 1915, a summons was issued to the parties in this case to appear before the Supreme Court of the United States of America, One hundred and twenty days from the date of said citation;

That on the same day another order was issued by this Court directing that a certified copy of the record, testimony, stipulations,

and all proceedings in this case be transmitted to said Supreme Court of the United States;

That due to the fact the volume of the record to be translated is unusually large, it has been impossible to finish the translation and examination of the whole record in this case within the time specified by this Court so as to have it before the Supreme Court of the United States on or before the return date of said citation;

Wherefore, appellants respectfully ask this Hon. Supreme Court to grant an extension of time within which to finish the translation and prepare the transcript of the record and to issue a new summons in this case.

Manila, December 9, 1915.

(Sgd.)

ANTONIO M. OPISSO,

Attorney for Plaintiffs and Appellants,

Plaza Moraga No. 20, Manila, P. I.

Copy of this petition sent to Messrs. Gilbert, Cohn & Fisher.

(Sgd.)

ANTONIO M. OPISSO.

384 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET, et al., Plaintiffs and Appellants.

versus

THE HONGKONG & SHANGHAI BANKING CORPORATION, et al.,
Defendants and Appellants.

Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, it is ordered that the time for docketing the transcript of the above-entitled cause in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., be and the same is hereby enlarged so that the same shall not expire before the 1st day of March, 1916.

Manila, P. I., December 13, 1915.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,

Associate Justice of the Supreme Court

of the Philippine Islands.

Copy furnished to A. M. Opisso and Gilbert, Cohn & Fisher.

385 Clerk's Office, Supreme Court, Philippine Islands. Filed
Jan. 20, 1916.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

ZOILLO IBAÑEZ DE ALDECOA et al., Plaintiff, Appellant and Appellee,
versus
HONKONG AND SHANGHAI BANKING CORPORATION et al., Defendant,
Appellant, and Appellee.

The undersigned attorneys for both parties appellant and appellee hereby request the Honorable Court that in as much as the revision of the transcript of the records in the above entitled case cannot be finished in time to have the same in the hands of the Clerk of the Supreme Court of the United States, the return date for the summons in the appeal of the above entitled case be extended to the first day of April, 1916.

Manila, January 19, 1916.

Respectfully submitted.

GILBERT, COHN & FISHER,
p. p. F. A. FISHER,
Attorney for the Defendant, Appellant and Appellee.

ANTONIO M. OPISSO,
Attorney for the Plaintiff, Appellant and Appellee.

386 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET et al., Plaintiffs and Appel-
lants,
versus
THE HONGKONG & SHANGHAI BANKING CORPORATION, et al., De-
fendants and Appellants.

Nunc Pro Tunc Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, it is ordered that the time for docketing the transcript of the above-entitled cause in the office of the Clerk of the Supreme Court of the United States at Wash-

ington, D. C., be and the same is hereby enlarged so that the same shall not expire before the 1st day of April, 1916.

Baguio, as of January 20, 1916.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,

*Associate Justice of the Supreme Court of
the Philippine Islands.*

387 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET et al., Plaintiffs and Appel-
lants,

vs.

ALDECOA Y CIA. EN LIQUIDACION et al., Defendants and Appellants.

Now come the plaintiffs and appellants in the above entitled case Isabel Palet v Cabarro, Joaquin and Zoilo Ibañez de Aldecoa, and respectfully state:

That on the 13th day of December 1915, they obtained from this Court an extension of time up to, and including March 1st, 1916, wherein to make their appearance and lodge their appeal in the office of the Clerk of the United States Supreme Court, together with the transcript of the record of this case.

That pursuant to the order of this Court, these plaintiffs and appellants on the 23 day of February, 1916, filed with the Clerk of this Court all papers necessary in this appeal, and the transcript of the record in the above entitled case together with a statement from the attorney and counsel of the defendant and appellant that he had found the same (that is to say, the translation thereof, correct, and asked said Clerk to examine said papers and the transcript of the record and certify to the correctness thereof, in due time as to have said transcript of the record and other papers pertaining to

388 this appeal at the office of the Clerk of the Supreme Court of the United States on the date fixed by the order of this Court.

That several days afterwards, when the undersigned counsel for plaintiffs and appellants came to this Court to inquire from the Clerk if the transcript of the record had been certified, said Clerk informed him that he had not been able to attend to that matter due to the great amount of work then on his hands it being the closing season of the sessions of this Court, but that Counsel, having lodged all papers in due time, he the said Clerk would lay the matter personally before this Court and have the same fix another date for the return of the summons.

That only on this date the Clerk has found time to complete the revision of the long and bulky record of this case and the tran-

script thereof and is about to certify to the correctness thereof and the undersigned counsel having also learned from said Clerk that due to the vacation of this Court and to the fact that the Hon. Justice who has taken cognizance of this appeal has been in Baguio, said Clerk has not been able to take up personally the matter of the extension of the time for the return day and the lodging of the appeal papers and transcript of the record at the office of the Clerk of the Supreme Court of the United States,—there having been no laches on the part of this counsel, having done all in his power and all that was within his province to have the record of the case lodged in due time at the office of the Clerk of the Supreme Court of the United States,—the undersigned counsel on behalf of the plaintiffs and appellants Isabel Palet y Gabarro Joaquin and Zoilo Ibañez de Aldecoa

389 Respectfully prays that this Court shall set the 30th day of July, A. D. 1916, for the true date of the return of the summons and the lodging of the transcript of the record of the above entitled case in the office of the Clerk of the Supreme Court of the United States, the reason for the fixing the above date being that it is the reasonable earliest date therefor a small margin being left for any possible delay in the mails.

Respectfully submitted.

ANTONIO M. OPISSO,
Counsel for Plaintiffs and Appellants.

390 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6889.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET et al., Plaintiffs and
Appellants,
versus

ALDECOA & COMPANY IN LIQUIDATION et al., Defendants and
Appellants.

Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, and that the appellants have not been guilty of laches in lodging the transcript of the record with the Clerk of this Court to be certified, it is ordered that the time for docketing the transcript of the above-entitled case in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., be and the same is hereby enlarged so that the same shall not expire before the 30th day of July, 1916.

Manila, P. I., June 13, 1916.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
Associate Justice Supreme Court, Acting in Vacation.

391 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 390 typewritten pages (Parts 1 and 2) contain a true and correct translation and transcript of the record and proceedings in the Court of First Instance of Manila and in the Supreme Court of the Philippine Islands in the case of Joaquin Ibañez de Aldecoa y Palet et al. vs. The Hongkong & Shanghai Banking Corporation et al., bearing No. 6889 on the docket of this Supreme Court.

In Witness Whereof, I hereunto set my hand and affix the official seal of the Supreme Court of the Philippine Islands this 15 day of June, 1916.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court
of the Philippine Islands.*

392 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in the case of Joaquin Ibañez de Aldecoa y Palet et al. vs. The Hongkong & Shanghai Banking Corporation et al., bearing No. 6889 on the docket of this Supreme Court, final judgment was rendered on August 28, 1915, and a petition for appeal to the Supreme Court of the United States was allowed on October 11, 1915.

In Witness Whereof, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands this 15 day of June, 1916.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court
of the Philippine Islands.*

Endorsed on cover: File No. 25,411. Philippine Islands Supreme Court. Term No. 581. Zoilo Ibanez de Aldecoa y Palet and Joaquin Ibanez de Aldecoa y Palet, appellants, vs. The Hongkong and Shanghai Banking Corporation et al. Filed July 18th, 1916. File No. 25,411.

TRANSLATION OF DECISION

SUPREME COURT OF THE UNITED STATES

NOTORIOUS TRADE MARK CASE, 1917

No. 281

JOAQUIN IBANEZ DE ALDECOA Y PALET, SOLO IBANEZ
DE ALDECOA Y PALET, AND ISABEL PALET Y DE
BARRO, APPELLANTS,

HONGKONG AND SHANGHAI BANKING CORPORATION

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS

FILED JULY 22, 1919.

(35,413)

(25,412)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 582.

JOAQUIN IBANEZ DE ALDECOA Y PALET, ZOILO IBANEZ
DE ALDECOA Y PALET, AND ISABEL PALET Y GA-
BARRO, APPELLANTS,

vs.

HONGKONG & SHANGHAI BANKING CORPORATION,

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

No. 8519.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff,
 VERSUS
 ALDECOA & Co., en Liquidación; ISABEL PALET VINDA DE ALDECOA,
 Zoil o Ibañez de Aldecoa, Joaquin Ibañez de Aldecoa, Alejandro
 Macleod, William Urquhart, as Liquidator of Aldecoa & Com-
 pany, Defendants.

Now comes the plaintiff in the above entitled case and as cause of
 action against the above named defendants, states:

I.

That plaintiff is at present and has at all times below mentioned
 been a corporation duly registered and licensed to do business within
 the Philippine Islands, in accordance with the laws in force in the
 same.

II.

That at all times below mentioned, prior to December 31 of the
 year of our Lord 1906, Aldecoa & Co. was a general mercantile
 partnership (sociedad mercantil regular colectiva) duly or-
 ganized and existing under and by virtue of the laws of the
 Philippine Islands, having its main office in the City of Manila,
 Philippine Islands. That on December 31, of the year of our Lord
 1906, the term of said partnership expired (by limitation) and the
 Company entered in liquidation under the direction of Mr. William
 Urquhart, who is at present and has been from the last named date,
 acting as duly appointed and qualified liquidator of Aldecoa & Co.

That at all times hereafter mentioned, the defendant Isabel Palet
 and Alexander Macleod have been general partners (socios colec-
 tivos) of said Aldecoa & Co.

That in every instance hereinafter mentioned prior to the liquida-
 tion of said Aldecoa & Co. and sometime after the date when the
 same entered in said period of liquidation, the defendants Joaquin
 Aldecoa and Zoilo Aldecoa were partners and appeared in the part-
 nership deed of said company and in the Mercantile Registry of the
 City of Manila, as industrial partners of said Company.

III.

That on February 23 of the year of our Lord 1906, the defendants
 in this case executed in favor of the plaintiff a certain written docu-

ment, a copy of which is attached hereto marked Exhibit "A" and made part of this complaint. In and through said document the defendants pledged to the plaintiff as a guarantee for payment to the plaintiff of the amount due and payable, according to the balance of the current account, by Aldecoa & Co., the following property, to wit:

1. Sixteen (16) shares of stock of the Banco Español-Filipino, being numbered from 2356 to 2371, inclusive, of said capital stock, and

2. Four hundred and fifty (450) shares of the capital stock of the Compañia Maritima, said shares being numbered from 51 to 100, inclusive, and 301 to 700 inclusive, of said capital stock, and mortgaged the following real property situated in this City of Manila, Philippine Islands, to wit:

Two-third (2/3) undivided parts of a parcel of land with a store house of strong materials with roof of galvanized iron, built within its area, situated in Calle Jolo, of the district of Binondo, North Division of the Registry of Property of this City and marked at present with No. 6 of said street, the description of which is as follows:

A. Urban property.—A lot with the camarine of strong materials with roof of galvanized iron, built within its area, situated in Calle Jolo of the district and judicial section of Binondo and North demarcation of the Registry of the Property of this Capital and designated at present by the Government police No. 6. It is

bounded on the right of its entrance by house and lot No. 4 belonging to the heirs of Don Jose Maria Fabie; on the left by house and lot No. 8 of Don Jose Varela y Miciano, and on the back by Binondo river. The whole of the lot occupies a superficial area of 1308 square meters and 23 decimeters, of which 393 square meters and 58 decimeters are covered by the building. This property is registered at foliós 181, 186 and 187, Volumes 6 and 48 of the Registry of Property of this Capital, books 3 and 13 of the Section of Binondo, property No. 111, inscriptions Nos. 5, 6 and 7.

B. Three-fourths ($\frac{3}{4}$) undivided parts in three adjoining properties known as "Camarines de la Barraca" on account of the common purpose for which they are used, as deposit store rooms, the description of each one of them being as follows:

B. First.—Urban property, consisting of a masonry camarine with iron roof, called "La Prensa" because it contains a hemp press, with the lots on which it is built, said property being situated in Calle Barraca of the district of Binondo, designated by police No. 5 and bounded on the right of its entrance by one of the three properties to wit: that designated with No. 7 of the same street; on the left by

a lot without number which is the third of the three properties in question, and on the back by the lot without number of Calle Carenero belonging to the Hacienda; its superficial area measures 1875 square meters with 84 square decimeters, of which the building occupies an area of 1553 square meters and 74 square centimeters. This property is registered at folios 70, 72, 73 and 190, Volumes 6 and 48 Book 3 of Section of Binondo, property No. 91, annotations letters C, Ch and E.

B. Second.—Urban property, consisting of a house and a cama-

rine or bodega which is an accessory thereof, of strong materials with the lot on which they are built, situated in Calle Barraca of the district of Binondo and designated at present with No. 7. It is bounded on the right of its entrance by house and lot No. 9 now belonging to Doña Maria C. Vales y San Juan, formerly of the late Don Vicente Vales, on the left by camarine and lot No. 5, hereinbefore described, and on the back by lot without number of calle Carenero, of the Hacienda; its superficial area being 564 square meters and 94 square centimeters, of which the building occupies 499 meters and 69 centimeters. This property is registered at folios 76, 78, 79 and 198, Volumes 6 and 48, Book 3 of Binondo Section, property No. 92, annotations letters C, Ch and E.

6 B. Third.—Urban property, consisting of a strong material camarine built on its own lot, situated in Calle Barraca of the district of Binondo, without police number as yet. It is bounded on the right, facing its entrance, by house No. 5 first described under letter B, on the left also by house No. 5 of the Presses and on the back by a lot without number in calle Carenero belonging to the Hacienda. It has a superficial area of 1153 square meters and 26 square centimeters, of which the building occupies 606 square meters and 16 square centimeters. This property is registered at folios 82, 84, 85 and 202, Volumes 6 and 48, Book 3 of Binondo Section, property No. 93, annotations letters C, Ch and E.

IV.

That after that date to wit: on or about the 23rd day of March, 1906, the respective parties of this complaint duly made and executed a certain written document, copy of which is attached hereto, marked Exhibit "B" and made part of this complaint, in and by which document, the mortgage above referred to, designated as Exhibit "A," was modified and amended through the correction of the description of the property above designated by the letter "C" and through the addition of another parcel of land, together with the improvements thereon, hereinafter set forth and described.

That the true description of the aforesaid parcel "C" according to said instrument of March 26, 1906, is as follows, to wit:

7 C. Three-fourths ($\frac{3}{4}$) undivided parts in an urban property, consisting of eight houses and their outbuildings of strong materials with the large lot over part of which they are built, situated by its front in calle Real of the suburb of Malate, Judicial District and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by properties of the Clergyman Don Silvino Lopez Tuñon and Don Segundo Javier, on the left by calle San Antonio Abad and on the back by the sea, the whole lot measuring a superficial area of 8870 square meters and 76 centimeters also square.

That the additional real property included in the conditions of said mortgage under and by virtue of the conditions of said document dated March 23, 1906, is described as follows:

D. Urban property, consisting of a house of strong materials with

galvanized iron roof and the lot on which it is built, designated at present with No. 561, situated by its front in calle Real of the suburb of Malate judicial district and demarcation of the Registry of Property of this City. Its front measures 20 meters; on the right of its entrance 42 meters 50 centimeters; on the left 30 meters and 20 centimeters; and on the back on a straight line running from North to South, 16 meters and 20 centimeters, and on the back on a straight line running from North to South 16 meters and 20 centimeters, on a line running from East to West 12 meters and 85 centimeters, both

sides forming an acute angle in the direction from East to West and in the third line which with the former forms another angle and closes the poligone in a South to North direction, 5 meters and 16 centimeters, its total area measuring 741 square meters with 72 square centimeters. Said property is bounded on the right of its entrance by a lot without number owned by Anacleto Vitian; on the left by the Plaza de Polvorin; and on the back on the side which measures 16 meters with 20 centimeters and 12 meters and 85 centimeters respectively, by the lot belonging to Doña Agapita de la Cruz, and on the side which measures 5 meters and 16 centimeters by house and lot without number of the Excelentísimo Señor Don Zoilo Ibañez de Aldecoa y Aguirre.

V.

That after that date, to wit: on December 22, 1906, the foregoing mortgage hereinbefore referred to as Exhibit "A," was again enlarged and supplemented by virtue of another instrument, copy of which is attached hereto, marked Exhibit "C" and made part hereof. That under and by virtue of said Exhibit "C," Aldecoa & Co. duly conveyed and assigned to the plaintiff, as mortgagee, in accordance with the conditions of the mortgage designated as Exhibit "A," all its right, title and interest in and to the following property, to wit:

E. Property situated in Quinala street of the town of Tabaco, Province of Albay, Philippine Islands. It is bounded on the North by Quinala street and by a lot of the heirs of Don Celerino Aramburo; on the East by the same heirs and Mariano Villanueva; on the South by Mariano Villanueva and Don Fausto Ormachea, and on the West by Modesto Borromeo and by Quinala street. The point marked — in the plan has been taken as reference point, being the intersection of calle San Juan or Rizal and the N. W. angle of calle Quinala. From this point in a Southwesterly direction $22^{\circ} 30' W.$, and along a line 23.50 meters long the line — 1, it reaches the point marked with the first No. 1 of the plan; from point 1 in a Southwesterly direction the line 1-2, it reaches point 2, on a course $38^{\circ} 30' W.$, being 52.20 meters long; from point 2 the line 2-3, follows a Southwesterly direction on a course $35^{\circ} 00' E.$, 54.50 meters long; from point 3 starts line 3-4, on a Northeasterly direction on a course $62^{\circ} 00' E.$, 64.60 meters long; from point 4 starts line 4-1, in a Northwesterly direction on a course $45^{\circ} 00' W.$, 78.00 meters long; and closes the poligone. The superficial area enclosed within poligones 1, 2, 3, and 4 measures 3,869 square meters distributed as follows: Press, camarine and hemp deposit 1367.51

square meters and the rest, that is to say, the lot, 2501.49 square meters. The property is composed of a building land bounded on the East by a bamboo fence and on the North by a piece of masonry wall belonging to the adjoining owner, Mr. Aramburo; the rest, that is to

say, the greater part of the land lacking of any kind of enclosure. Within the lot a one-floor camarine of strong materials has been built consisting of one single body and a small abutting part, measuring: the main body 46.70 meters long by 29.30 meters wide; and the abutting part 5.40 meters long by 1.90 meters wide. It has one single floor; the walls being of masonry up to a height of 1.50 meters, except the part destined to office where all the wall is of masonry; the rest of the same as well as the roof being of galvanized iron. On the front, that is to say, on its North side it has a shed along the front, being 4.60 meters wide; and another on the East side of the same, being 4.50 meters wide and 39.00 meters long, which does not run all along the East side but only reaches up to the abutting part of the building, which is devoted to the offices. It has two doors on the front and four on the East, all of them opening on the lot under the sheds, being unnumbered. Its construction is solid and of the current style in the locality for this kind of buildings.

VI.

That afterwards, to wit: on March 31, 1907, the said mortgage above referred to as Exhibit "A" was again enlarged and supplemented by a certain instrument, copy of which is attached hereto, marked Exhibit "E" and made part hereof. That under and by virtue of the stipulations contained in said Exhibit "E" Aldecoa &

Company duly conveyed and assigned to the plaintiff in this case as mortgagee in accordance with the stipulations of said mortgage Exhibit "A" all its right, title and interest in and to the following property described as follows:

F. Rural property, consisting of a land destined to pasture near the Visita of Cibgon, Taytay and Pamboan in the province of Ambos Camarines, it is bounded on the North by lands of Don Eulogio Fernandez; on the East by the sea; and marshes of the State; on the South by pasture lands of Don Mariano Villamor and the river called Taytay which flows into the Visita of Pamboan; and on the West by Port Sisiran; measuring nine hundred and fifty-four hectares.

G. Another rural property consisting of a land situated in the place designated as "Salvacion de la Visita de Hignaroy" of the town of Tigaon in the province of Ambos Camarines, the area of which measures 607 hectares 26 ares, of which 486 hectares and 79 ares are in part cogon bushes and in part hemp plantations; and 124 hectares and 47 ares are cogen bushes, its boundaries being as follows: on the North, woods of the State, hemp plantations of Don Paciano Radirian, Don Luis Jallorres, the creek of Tinangay and creek of Talanquiso; on the South, river Osini, the confluence of river Daso and Osini and the said river Daso; on the East, river Cigaren and land of Don Juan Filipino; and on the West, land of Pedro Bar-

12 rubia and said river Osini. This property is registered at folios 16 and 8, books 1st. and 1st. of the towns of Caramoan and Tigaon respectively, appearing at folios 30 *bis* and 25 *bis*, 247 to 248, Second inscriptions, in the Registry of Property of Camarines Sur.

VII.

That later on, to wit: on January 30, 1907, the so often hereinbefore mentioned mortgage, marked Exhibit "A," was again enlarged and supplemented by an instrument, copy of which is attached hereto, marked Exhibit "G" and made part hereof.

VIII.

That still later on, to wit: on March 31, 1907, the aforesaid mortgage hereinbefore described as Exhibit "A" was once more enlarged and supplemented by an instrument, a copy of which is attached hereto, marked Exhibit "F" and made part of this complaint.

That under and by virtue of the conditions of said deed, Exhibit "F," Aldecoa and Company, duly conveyed and assigned to the plaintiff in this case as mortgagee, in accordance with the stipulations of the mortgage hereinbefore designated as Exhibit "A," all its right, title and interest in and to eleven parcels of land situated in the province of Ambos Camarines and more particularly described and set forth in said Exhibit "F."

13

IX.

That still later on, to wit: on August 30, 1907, the mortgage above mentioned, marked Exhibit "A," was still further enlarged and supplemented by a document, a copy of which is attached hereto, marked Exhibit "D," and made part of this complaint. That according to and by virtue of the conditions of said Exhibit "D," 322 shares of stock of the Pasay Estate Company Limited were mortgaged to the plaintiff, said certificates of stock being numbered from 633 to 954, both inclusive.

X.

That according to and by virtue of the conditions of said mortgage, the defendant Aldecoa & Company was and is obliged to pay to the plaintiff the sum of Fifty Thousand Pesos (P50,000) per year, on account of the debt on current account, during each and every one of the years 1906, 1907, 1908, and 1909, there remaining a balance due in said account of not over Two Hundred and Seventy-five Thousand pesos (P275,000) and that by virtue of the conditions of said mortgage the fulfilment of said obligations has been and is secured by said mortgage Exhibit "A."

XI.

That the defendants, each and all of them, have completely

14 stopped, failed and refused the payments mentioned in paragraph number 10 above, and in said mortgage specified and referred to, there remaining in favor of said plaintiff in said current account a balance of Four Hundred and Twelve Thousand Five Hundred and Four Pesos and Eighty-nine Centavos (P412,504.89), all of said balance being at present due and payable.

Therefore, plaintiff prays for judgment in its favor and against the defendants jointly and severally, for the said sum of Four Hundred and Twelve Thousand Five Hundred and Four Pesos and Eighty-nine Centavos (P412,504.89) Philippine currency, together with the interest thereon at the rate of Seven Per Cent (7%) per annum and the costs of this suit; and that the corresponding decree issue for the sale of the above described property by the Sheriff of the City of Manila, Philippine Islands, in accordance with the Law and procedure of this Court, if said judgment is not paid in full within the term of court on which judgment has been rendered; and that the proceeds of said sale be applied to the payment of the amount due to this plaintiff; and that each and every one of the defendants be deprived and denied of all right, claim and equity of redemption in said property or any part thereof; and that said plaintiff be given judgment and order of execution against said defendants for any deficiency which may result after having applied all the proceeds of the sale of said property which may be legally applied to the satisfaction of said judgment; and that the plaintiff be granted any other
15 remedy on the premises which the Court may deem just and equitable.

Manila, P. I., March 29, 1911.

HAUSSERMANN, COHN & FISHER,

(Sgd.) p. p. CHARLES C. COHN,

Attorneys for the Plaintiff.

There is a stamp which reads: "United States of America—Manila, P. I.,—Part III—No. 8519—The above complaint has been filed this 31st day of March 1911.—(Signed) J. McMicking, Clerk of the Court of First Instance, Manila, P. I.—3:20 p. m."

EXHIBIT "A."

Deed of Credit.

Know all by these presents, that we, Don Jonquin de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldés, on July 31st, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to; Don Zoilo Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this
16 Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, through an instrument executed

before the Notary Public of this Capital, Don Enrique Barrera y Caldés on July 31st, 1904, assisted by and with the consent of my said mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow of Señor Don Zoilo Ibañez de Aldecoa, by virtue of an instrument ratified and executed before the Notary Public of the Villa y Corte de Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on December 31st, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to legally execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldés, on December 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet

No. 156 folios 92 and 101 of the Book of Partnerships of the
 17 Mercantile Registry of this Capital, all of them, parties of the first part; and Mr. Harry Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the "Hongkong & Shanghai Banking Corporation" by virtue of the representation and powers conferred to me by the letter of attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco de Asis Caballero y Mediano, Vice-Consul of Spain for the British Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul for the same Colony, and registered on February 26, 1898, at Sheet No. 10, bis, inscription No. 1, Volume 2 of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part; hereby make it known:

I. That Don Joaquin, Don Zoilo, and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in undivided equal shares at the rate of one third each of the following properties, to wit:

A. Urban property. A lot with the camarine of strong materials with roof of galvanized iron, built within its area, situated in Calle Jolo of the district and Judicial Section of Binondo and North demarcation of the Registry of the Property of this Capital and designated at present by the Government police No. 6. It is bounded on the right of its entrance by house and lot No. 4 belonging to the heirs
 18 of Don Jose Maria Fabie; on the left by house and lot No. 8 of Don Jose Varela y Miciano, and on the back by Binondo River. The whole of the lot occupies a superficial area of 1,308 square meters and 23 decimeters, of which 393 square meters and 58 decimeters are covered by the building. This property is registered at folios 181, 186 and 187, Volumes 6 and 48 of the Registry of

Property of this Capital; books 3 and 13 of the Section of Binondo, property No. 111, inscriptions Nos. 5, 6 and 7.

Fol. 188 vto. Vol. 13, Binondo Section and 48 of the Archive, property No. 111 duplicate, Inscription 8th.

II. That the Excelentisima Señora Doña Isabel Palet y Gabarro, and her children Don Joaquin, Don Zolio and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in equal undivided shares, at the rate of one-fourth each, of the following property, to wit:

Three buildings joined under the name of "Camarines de la Barraca" the reason for joining them being the fact that they are used as warehouses, the description of which being as follows:

B. First. Urban property, consisting of a masonry camarine with iron roof, called "La Prensa" because it contains a hemp press, with the lots on which it is built, said property being situated in Calle Barraca of the district of Binondo, designated by police No. 5 and bounded on the right of its entrance by one of the three properties to wit: that designated with No. 7 of the same street; on the left by a lot without number which is the the third of the three properties in question, and on the back by the lot without number of 19 calle Carenero, belonging to the Hacienda; its superficial area measures 1,875 square meters with 84 square decimeters, of which the building occupies an area of 1,553 square meters and 74 square centimeters. This property is registered at folios 70, 72, 73 and 190, Volumes 6 and 48, Book 3 of Section of Binondo, property No. 91, annotations letters C, Ch and E.

Fol. 191 vto. Vol. 13, Section of Binondo and 48 Archive, property No. 92 duplicate, Inscription 7th.

C. Second. Urban property, consisting of a house and a camarine or bodega which is an accessory thereof, of strong materials with the lot on which they are built, situated in Calle Barraca of the district of Binondo and designated at present with No. 7. It is bounded on the right of its entrance by house and lot No. 9 now belonging to Doña Maria C. Vales y San Juan, formerly of the late Don Vicente Vales, on the left by camarine and lot No. 5 hereinbefore described and on the back by lot without number of Calle Carenero of the Hacienda, its superficial area being 564 square meters and 94 square centimeters, of which the building occupies 499 meters and 69 centimeters. This property is registered at folios 76, 78, 79 and 198, Volumes 6 and 48, Book 3 of Binondo Section, property No. 92, annotations letters C, Ch and E.

Fol. 200, Volume 13, Section Binonda and 48 Archive, property No. 91 duplicate, Inscription 7th.

20 D. Third. Urban property, consisting of a strong material camarine built on its own lot, situated in Calle Barraca of the district of Binondo, without police number as yet. It is bounded on the right of its entrance by house No. 5 first described

under letter B, on the left also by house No. 5, of the Presses, and on the back by lot without number of Calle Carenero belonging to the Hacienda. It has a superficial area of 1153 square meters and 26 square centimeters, of which the building occupies 606 square meters and 16 square centimeters. This property is registered at folios 82, 84, 85 and 202, Volumes 6 and 48, Book 3 of Binondo Section, property No. 93, annotations letters C, Ch and E.

Fol. 293 vto. Volume 13, Section Binondo and 48 Archive, property 93 duplicate, Inscription 7th.

E. Urban property, consisting of nine houses and their outbuildings of strong material with the large lot on which they are built situated and fronting, for the effects of this description, on Calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Tuñon and of Don Segundo Javier; on the left by Calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8,070 square meters 76 centimeters also square.

Fol. 210, Volume 3, Book 8, Malate Section, property No. 384, annotation letter B.

21 III. That the Hongkong & Shanghai Banking Corporation had granted to the firm of Aldecoa and Company a certain credit in current account to attend to its mercantile operations, of which use had been made up to this rate, and in order that it may appear in due form, as well as to make clear the conditions stipulated to that effect, we execute the present instrument by virtue of which we solemnly state:

IV. That the Hongkong & Shanghai Banking Corporation shall keep open in favor of the general mercantile partnership Aldecoa and Company a credit in current account up to the sum of Four Hundred and Seventy-five Thousand Pesos (P475,000) Philippine currency, part of which have already been used.

V. That the debtor firm of Aldecoa and Company secures the payment of its credit in favor of the Hongkong & Shanghai Banking Corporation during the whole period of existence of this agreement, with all the hemp bought by the firm or sent to the same for sale by its debtors or other persons who may be in similar case, and therefore, the general mercantile partnership of Aldecoa and Company binds itself to deposit with the Hongkong & Shanghai Banking Corporation all the amounts derived from the sales of said product in Manila, said firm Aldecoa and Company being, however, authorized to withdraw these deposits by issuing checks against its current account in order to attend, with the amounts so drawn, to the development of its business in accordance with the continuation of its credit opened and acknowledged in the present agreement and without prejudice to the reduction of said credit in the form hereinafter stipulated.

VI. That the debtor Aldecoa and Company binds itself to send to

the Hongkong & Shanghai Banking Corporation in Manila, at the end of each month a written notice giving a detailed and complete statement of the quantity of hemp which said company has on hand in Manila and in the provinces.

VII. The credit in current account which the Hongkong & Shanghai Banking Corporation has opened in favor of the general mercantile partnership Aldecoa and Company, shall continue in force during the term of this agreement, provided, that said debtor company shall continue to make use of said credit through checks issued against the said Bank, with the sole object of applying those funds to the purchase of hemp, rice, and other products related with the object of said partnership, and subject to the obligation on the part of the debtor, Aldecoa and Company, to reduce its debit balance down to the sum of Four Hundred and Twenty-five Thousand Pesos (P425,000) on or before December 31, 1906, and to continue reducing said debit balance at the rate of at least Fifty Thousand Pesos (P50,000) per year until said debit balance be reduced to the sum of Two Hundred and Twenty-five Thousand Pesos (P225,000) Philippine currency, on January 1, 1911, on which event, the creditor Bank reserves to itself the right to enter into new stipulations with the debtor company for the total payment of its
23 debt, provided, that the yearly installments for the reduction of the capital shall begin to run from the 1st day of January 1906, so that the first Fifty Thousand Pesos (P50,000) Philippine currency shall be paid on December 31, 1906, and so on, until this stipulation is complied with, that is to say, for the sake of clearness:

(a) Up to and until December 31, 1906, the credit shall be of four hundred and seventy-five thousand pesos (P475,000) Philippine currency.

(b) Up to and until December 31, 1907, the credit shall be of four hundred and twenty-five thousand pesos (P425,000) Philippine currency.

(c) Up to and until December 31, 1908, the credit shall be of three hundred and seventy-five thousand pesos (P375,000) Philippine currency.

(d) Up to and until December 31, 1909, the credit shall be of three hundred and twenty-five thousand pesos (P325,000) Philippine currency.

(e) Up to and until December 31, 1910, the credit shall be of two hundred and seventy-five thousand pesos (P275,000) Philippine currency.

So that on January 1, 1911, the credit shall not be for a greater sum than two hundred and twenty-five thousand pesos (P225,000) Philippine currency.

VIII. In the event the debtor company should succeed in reducing the credit existing in its favor in the provinces by full or partial payment to said debtor company by its debtors, the
24 amount which this company might receive for this reason, shall be paid into the Hongkong & Shanghai Banking Cor-

poration on account of its debt, as additional payments to those agreed upon in the foregoing clauses.

IX. The said credit in current account shall earn in favor of the creditor Bank a reciprocal interest of seven per cent (7%) to be liquidated and payable at the end of every six months.

X. The firm of Aldecoa and Company guarantees the faithful and exact compliance on its part with all the obligations entered into by virtue of this document with the pledge of sixteen (16) shares of the capital stock of the Banco Español-Filipino of this City which it owns, numbered from 2,356 to 2,371 inclusive and 450 shares which it also owns of the capital stock of the Sociedad Anónima "Compañía Marítima" marked with Nos. 51 to 100 inclusive and 301 to 700 also inclusive, said shares being delivered to the Hongkong & Shanghai Banking Corporation for said Bank to keep the same in its possession as a deposit and with the diligence of an honest and reasonable man.

XI. We, Don Fernando Zobel y de Ayala in the name and on behalf of Doña Isabel Palet y Gabarró, Don Joaquín Ibañez de Aldecoa and Don Zoilo Ibañez de Aldecoa, guarantee further more the exact and faithful compliance with all the obligations contracted by the firm of Aldecoa and Company, with the voluntary special mortgage which we now constitute on the shares or interest which we respectively have in the property above described; the interest which

25 we have on the property described with letter "A" being security for the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five centavos (P13,847.75) Philippine currency of the principal, with the interest thereof; that which is described with the letter "B" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine currency of the principal and interest thereof; that described under letter "C" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine currency of the principal and the interest thereof; that described under letter "D" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine currency of the principal and interest thereof; and that described under letter "E" for the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98) Philippine currency of the principal and the interest thereof; each one of said pieces of property being also responsible in the sum of five hundred pesos (P500) for costs and judicial expenses, the balance of seventy-three thousand five hundred and ninety-eight pesos and eighteen centavos (P73,598.18) Philippine currency being secured by the shares of stock referred to in the preceding paragraph and which are given in pledge.

XII. That by common agreement all the contracting parties fix the value of the interest in the mortgaged property as follows, to wit:

26 that in the property described under letter "A" in the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five centavos (P13,847.75); that in the property described under letter "B" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that

in the property described under letter "C" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that in the property described under letter "D" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); and that in the property described under letter "E" in the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98); which respective values shall be the upset price for the first auction which in case of breach of the present obligation must take place in accordance with the existing laws and those which in the future might be promulgated on the premises, waiving, therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

XIII. It is a stipulated condition that the creditor Bank shall not have the right to ask for the sale of the property above described, to reimburse itself with the proceeds thereof of the total amount of the debt of the firm of Aldecoa and Company, until after the term of five (5) years fixed for the complete payment of the same shall have expired; being restricted in the meantime to receive
 27 from the debtor company the yearly sum of fifty thousand pesos (P50,000) which has been fixed for the partial yearly payment, and which is secured by the shares of stock above enumerated, even if the firm of Aldecoa & Company should enter in its period of liquidation before the expiration of the said five (5) years, since, to this effect, it is stipulated and agreed that the said term of five (5) years shall not be reduced to a lesser period of time for the mere fact that the firm of Aldecoa and Company goes into or places itself in liquidation, either by reason of the expiration of the term of partnership or by reason of being convenient to its interests and also whether said liquidation shall be carried privately or in an official or public manner, for all of which the debtor Company is from now empowered, without the term fixed in this document for the payment of its debt, being thereby diminished.

XIV. I, Mr. Harry Davies Campbell Jones in the name and on behalf of the Hongkong & Shanghai Banking Corporation does accept this document as to each and every part thereof, declaring to have received the sixteen (16) shares of stock of the Banco Español-Filipino and the four hundred and fifty (450) shares of stock in the Sociedad Anónima "Compañía Marítima" to which reference is made in paragraph X of this document, for said Bank which I represent, to preserve and keep as a deposit while the present obligation is in force.

XV. Both contracting parties submit themselves to the jurisdiction of the Judges and Courts of this Capital for the settlement of all judicial questions which might be raised by reason of the
 28 non-compliance of this contract, expressly waiving therefor the jurisdiction of the forum of their respective domiciles.

XVI. That both contracting parties bind themselves to execute at any time whatever documents may be necessary to make effective or to perfect the corresponding rights and obligations which by this document it is intended to acknowledge and establish and which may

be necessary for the registration of the mortgages or other obligations herein granted.

In witness whereof, we sign these presents in triplicate in Manila, this 23rd day of February, 1906.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.)

H. D. C. JONES, *Manager*.

(Sgd.)

ALDECOA & CIA.

(Sgd.)

FERNANDO ZOBEL.

(Sgd.)

ZOILO I. DE ALDECOA.

(Sgd.)

JOAQUIN I. DE ALDECOA.

Signed in the presence of:

(Sgd.) ANTONIO HIDALGO.

(Sgd.) JOSE M. A. ROSADO.

UNITED STATES OF AMERICA,

City of Manila, Island of Luzon, Philippine Islands, ss:

In the City of Manila this 23rd day of February, 1906, before me personally appeared Don Joaquin Ibañez de Aldecoa y Palet; 29 Don Zoilo Ibañez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, Don Alejandro Macleod and Mr. Harry Davies Campbell Jones, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Messrs. Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, Fernando Zobel y de Ayala and Harry Davies Campbell Jones, exhibited to me their respective certificates of cedula Nos. A-1,330,177, A-1,330,175, A-1,330,174 and A-1,324,201, issued by the Collector of Internal Revenue in this City the 25th of January, 25th of January, 25th of January and 10th of January, 1906; Mr. Alejandro Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Signed)

JOSE MA. ROSADO,

Notary Public.

My commission expires on December 31, 1906.

Filed at 11:35 a. m. on this date according to entry No. 230, page 98, Volume 11 of the Diary.—Manila, February 28, 1906.

[Seal of the Registry of Titles of this City of Manila.]

(Sgd.)

CLAUDIO GABRIEL.

Fees: P075—No. 1 Ar.

30

EXHIBIT "B."

Know all by these presents, that we, Don Jonquin Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my

mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to; Don Zoilo Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, through an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31, 1904, assisted by and with the consent of my said mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow of Señor Don Zoilo Ibañez de Aldecoa, by virtue of an instrument ratified and executed before the Notary Public of the Villa y Corte de Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on December 31, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to

legally execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31, 1896, and modified by another instrument dated February 20, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, all of them, parties of the first part; and Mr. Harry Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the Hongkong & Shanghai Banking Corporation by virtue of the representation and powers conferred to me by the letter of attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco de Asis Caballero y Mediano, Vice-Consul of Spain for the British Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul for the same Colony, and registered on February 26, 1898, at sheet No. 10, bis, inscription No. 1, Volume 2 of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part, hereby make it known:

I. That by virtue of an instrument executed in this City before the Notary Public thereof Don Jose Ma. Rosado on the 23rd day of February, 1906, the Hongkong & Shanghai Banking Corporation declared to have and to keep open in favor of the general mercantile partnership Aldecoa and Company a credit in current account up to the sum of four hundred and seventy-five

thousand pesos (P475,000) Philippine currency under the terms and conditions set forth in said instrument.

II. That to guarantee the payment of the above mentioned credit the Most Excellent Señora Doña Isabel Palet y Gabarro, and her children Don Zoilo and Don Joaquin Ibañez de Aldecoa y Palet executed in favor of the Hongkong & Shanghai Banking Corporation a mortgage of the interest which they have respectively on several pieces of property amongst which is included a certain property which is described as follows:

E. Urban property, consisting of nine houses and their outbuildings of strong materials with the large lot on which they are built situated and fronting for the effects of this description on calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Tuñon and of Don Segundo Javier; on the left by calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8070 square meters 76 centimeters also square.

III. That there being an error in the description of the property above referred to, wherein it is stated that there are
33 nine buildings thereon where in fact there are only eight, we execute the present document by virtue of which, we most solemnly agree:

IV. That the foregoing described property on which the Most Excellent Señor Doña Isabel Palet y Gabarro and her children Don Zoilo and Don Joaquin Ibañez de Aldecoa have executed a mortgage as aforesaid on the respective shares of interest which they have therein, that is to say, a share equal to one-fourth each, is described as follows:

E. Urban property, consisting of eight houses and their outbuildings of strong materials with the large lot over part of which they are built, situated *in* by its front in calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by properties of the Clergyman Don Silvino Lopez Tuñon and Don Segundo Javier; on the left with calle San Antonio Abad and on the back with the sea; the whole lot measuring a superficial area of 8870 square meters and 76 centimeters also square.

V. That the property above described shall be liable in regard to the interest which we mortgage for the sum of two hundred and three thousand nine hundred and eighty-five pesos and seventy-nine centavos (P203,985.79) of the principal above stated and the interest thereof, besides the sum of five hundred
34 pesos (P500) Philippine currency for costs and expenses in the event of litigation.

VI. That Doña Isabel Palet y Gabarro represented by me, Don Fernando Zobel y de Ayala, in order to enlarge the guaranties offered for the credit above referred to by this same document, executes a voluntary special mortgage on the following property:

F. Urban property, consisting of a house of strong materials with galvanized iron roof and the lot on which it is built, designated at

present with No. 561, situated by its front in calle Real of the suburb of Malate judicial district and demarcation of the Registry of Property, of this City. Its front measures 20 meters; on the right of its entrance 42 meters 50 centimeters; on the left 30 meters and 20 centimeters; and on the back on a straight line running from North to South 16 meters and 20 centimeters, and on the back on a straight line running from North to South 16 meters and 20 centimeters, on a line running from East to West 12 meters and 85 centimeters, both sides forming an acute angle in the direction from East to West and in the third line which with the former forms another angle and closes the polygon in a South to North direction, 5 meters and 16 centimeters, its total area measuring 741 square meters with 72 square centimeters.

35 Said property is bounded on the right of its entrance with a lot without number owned by Anacleto Vitan; on the left with the Plaza de Polvorin; and on the back on the side which measures 16 meters with 20 centimeters and 12 meters and 85 centimeters respectively, with the lot belonging to Doña Agapita de la Cruz, and on the side which measures 5 meters and 16 centimeters with house and lot without number of the heirs of the Excelentísimo Señor Don Zoilo Ibañez de Aldecoa y Aguirre.

VII. That by common agreement the contracting parties herein determine that the property described under letter "F" shall secure the payment of the sum of twenty-two thousand eight hundred and eighty-five pesos and sixty centavos (P22,885.60) Philippine currency of the principal of the credit above referred to, in other words, that which is stated in the said deed of February 23, 1906, together with the interest thereof, besides the sum of five hundred pesos (P500) Philippine currency for costs and expenses in the event of litigation.

VIII. That by common agreement all the contracting parties fix the value of the interest in the property above mortgaged as follows: that marked with letter "E" in the sum of two hundred and three thousand nine hundred and eighty-five pesos and seventy-five centavos (P203,985.75) and that described under letter "F" in

36 the sum of twenty-two thousand eight hundred and eighty-five pesos and sixty centavos (P22,885.60) which value shall be the upset price for the first auction which in case it becomes necessary in accordance with the stipulations contained in the deed of February 23, 1906, above referred to, may have to take place in accordance with the existing laws and those which in the future might be promulgated on the premises, waiving, therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

IX. All the contracting parties herein declare that this document is only an addition to the said deed of February 23, 1906, of which it is made part, since we declare in force each and every one of the parts of that deed without any other alterations than those contained herein.

Under the foregoing terms and conditions we execute the present document which we bind ourselves to keep and comply with faith-

ful- and fully in each and every part hereof, in the most solemn form under the Law.

In witness whereof, we sign the present instrument in triplicate in Manila, this 23rd day of March, 1906.

(Sgd.)

JOAQUIN I. DE ALDECOA.

For the Hongkong & Sanghai Banking Corporation,

(Sgd.)

H. D. C. JONES.

(Sgd.)

ZOILO I. DE ALDECOA.

(Sgd.)

FERNANDO ZOBEL.

(Sgd.)

ALDECOA Y CIA.

37

Signed in the presence of:

(Sgd.) POT. VILL. BERNABÉ.

(Sgd.) B. PABALAN.

UNITED STATES OF AMERICA,

City of Manila, Island of Luzon,

Philippine Islands, ss:

In the City of Manila this 23rd day of March, 1906, Before me personally appeared Don Joaquin Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, and Don Harry Davies Campbell Jones, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Said Don Joaquin and Don Zoilo Ibañez de Aldecoa, Don Fernando Zobel and Mr. Harry Davies Campbell Jones, exhibited to me their respective certificates of cedula Nos. A-1,330,177, A-1,330,173, A-1,330,174 and 1,324,201, issued by the Collector of Internal Revenue of this City, the first three on the 25th of January, 1906, and the last on the 10th of January, 1906, Mr. Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof, I have hereunto set my hand and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

JOSE MA. ROSADO,

Notary Public.

My commission expires on December 31, 1906.

38

[Two documentary seals of the Internal Revenue: One of P3.00 and another of P1.00.]

The above document has been registered in regard to the property designated with letter "F" at folio 137 bis, volume 3, Book 2, Malate Section, property No. 93, duplicate, Fifth Inscription. Manila, April 28, 1906.

[Seal Registry of Titles, City of Manila, P. I.]

(Sgd.)

CLAUDIO GABRIEL.

EXHIBIT "C".

Know all by these presents, that we, Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of "Aldecoa y Cia.", of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldés, on December 31, 1896, and modified by another instrument dated February 20, 39 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, the party of the first part, and Mr. A. G. Stephen, merchant, of lawful age, married and resident of this Capital, as agent of the "Hongkong & Shanghai Banking Corporation," established in Manila, the party of the second part,

Make it known:

1. Whereas, by a written public instrument executed before the Notary Public of the province of Albay, Don Lorenzo E. Villareal, on October 11, 1906, Don Salustiano Zubeldia guaranteed Messrs. Aldecoa and Company of this City, the payment of the balance owed by him to his firm, which document literally copied is as follows:

"Know all by these presents: that I, Salustiano Zubeldia, Spaniard, married to Doña Ignacia Echevarria, a merchant of Tabaco, resident of Tabaco, province of Albay, Philippine Islands, hereby states and make known:

1. That I acknowledge the balance appearing against me in my current account with Messrs. Aldecoa and Company in Manila as per statement of account closed on September 30, of the present year 1906.

2. That I work as consignor of said gentlemen and I am bound to deliver them all the hemp gathered by me, to sell it on 40 commission as per agreement.

3. That in order to guarantee the balance which I mention in the final paragraph, I mortgage expressly and specifically my real estate, personal property and credits against those persons who buy hemp from me and who are solvent, all of which are described as follows:

- (a) A store with press and walls of masonry and galvanized iron, and roof of galvanized iron, its area being 1367.51 square meters, its value being. . . P38,380.93
- (b) A house of strong materials with galvanized iron roofs and masonry walls, its cost being. 17,901.04
- (c) A lot where the two foregoing premises are situated, bounded on the N. by calle Quinali and by lot of the heirs of Ceferino Aramburu, on the E. by the same heirs and Mariano Villanueva; on the S. by

Mariano Villanueva and Manuel Zalvidea; and on the W. by Modesto Borromeo and by calle Quinali, the area of the same measuring 2501.49 square meters and its purchase value being		2,000.00
41	(d) On said lot and on the other side of calle Quinali there is a stone camarine for the deposit of salt and kerosine, the cost of which is.	P1,035.23

(e) Merchandise:

275 bales with 550 piculs of hemp of the approximate value of	10,450.00
30,000 rattan rope for packing.	120.00
10,500 packing mats.	420.00
690 sacs of Saigon rice.	4,097.63
4 cases of La Rosa cigarettes of 3,000 cts.	552.84
1 case " " " of 3,300 cts.	151.67
109 sacs of salt.	101.37
90 cases of kerosine Dragon brand.	307.80
50 piculs hemp, loose.	925.00
Merchandise consisting in hemp and other articles of immediate sale in the Agency of Bacacay.	700.00
Id. Id. Id. Agency of Tini.	4,000.00
2 large cascocs for loading and unloading cargo, actual value.	1,600.00
The barge San José, its value.	2,000.00

Solvent debtors or hemp purchasers who have, most of them, their property mortgaged:

Chinaman Go Tiangeo.	4,862.05
Maximino Chaves.	692.44
42 Dionisio Templado.	P9,063.52
Vicente Belmonte.	1,199.84
Diego Palomo.	331.60
Chinaman Conga.	1,589.94
Chinaman Ang Tungeo.	600.00
Pedro Bargas.	5,869.75
Chinaman Sy Quingco.	16,836.23
Emigdio Matias.	19,136.07
Manuel Gonzalez.	909.22
Ramon Morales.	5,348.87
Sabina de Santillan.	1,649.32
Venancio Canofin.	499.80
Mariano Agunday.	274.00
Sixto Almonte.	575.45
Pablo Belen.	826.13
Pedro Almonte.	904.00
Jose Asi.	284.45
Jorge Salchen.	471.00
Chinaman Antua.	270.73
Simeon Riosa.	197.00
Alejandro Quitasol.	580.62

Felipe Cortesano	173.95
Paulino Matias	438.79
Pablo Escarella	2,940.92
Chinaman Uy Angeo	1,466.57
" Dy Cuico	484.27
Balgino Belarmino	450.00
Perfecto Murillo	986.25
43 Chinaman Uy Baico	P1,894.38
Carlos Lama	537.00
Vicente Colingo	616.38
Laureano Berces	6,009.56
Chinaman Go Paco	139.00
" Dy Picco	831.30
Casimiro Conejero	1,385.82
Toribio Cabiles	700.00
Anselmo Bonagua	573.25
Chinaman Chua Fiangco	253.13
Maria Matias	173.94

P177,769.95

4. That the titles of the above described property are in the Registry of Property of this province of Albay, Philippine Islands, for the registration thereof and as soon as the same are returned to me, I shall send them to Aldecoa and Company in Manila for the purposes of this my deed.

5. That the said property is free from all charges or encumbrances.

6. And last. That I guarantee the solvency of my hemp buyers mentioned in this document.

In witness whereof, I sign these presents in Tabaco, this tenth day of October, nineteen hundred and six,

(Sgd.)

SALUSTIANO ZUBELDIA.

Signed in the presence of:

(Sgd.) SERAPIO ECHEVARRIA.

(Sgd.) RAFAEL BABLJES.

UNITED STATES OF AMERICA.

44

Philippine Islands, Province of Albay:

In the Municipality of Tabaco in the said province, this eleventh day of October, nineteen hundred and six, A. D., I, the Notary Public of this Municipality Don Lorenzo E. Villareal, having been invited to the residence of Don Salustiano Zubeldia, said Salustiano Zubeldia personally appeared before me and I certify to know him to be the person who executed the above instrument and ratified the same to be an act of his own free will and deed. He exhibited to me his cedula No. 833,020 issued by the Municipal Treasurer of Tabaco on the

19th day of January, 1906. In witness whereof, I place my official seal and signature on the date above mentioned.

[HIS NOTARIAL SEAL.]

(Sgd.)

LORENZO E. VILLAREAL,

Notary Public until December 31, 1907.

The property described which in the foregoing deed is marked with the letters (a), (b), (c) and (d), is described as one single piece of property as follows:

Property situated in Quinali street of the town of Tabaco, province of Albay, Philippine Islands. It is bounded on the North by Quinali street and by a lot of the heirs of Don Ceferino Aramburu; on the East by the same heirs and Mariano Villanueva; on the South by Mariano Villanueva and Don Fausto Ormachea; and on the West by Modesto Borromeo and by Quinali street. The point

marked — in the plan has been taken as reference point,
45 being the intersection of Calle San Juan or Rizal and the

N. W. angle of Calle Quinali. From this point in a Southwesterly direction $22^{\circ} 00' W.$, and along a line 23.50 meters long the line — 1, it reaches the point marked with the first No. 1 of the plan; from point 1 in a Southwesterly direction the line 1-2, it reaches point 2, on a course $38^{\circ} 30' W.$, being 52.20 meters long; from point 2 the line 2-3, follows a Southwesterly direction on a course $35^{\circ} 00' E.$, 54.50 meters long; from point 3 starts line 3-4, on a Southwesterly direction on a course of $62^{\circ} 00' E.$, 64.60 meters long; from point 4 starts line 4-1, in a Northwesterly direction on a course $45^{\circ} 00' W.$, 78.00 meters long; and closes the poligone. The superficial area inclosed within poligones 1, 2, 3, and 4 measure 3,869 square meters distributed as follows: Press, camarine and hemp deposit 1,367.51 square meters and the rest, that is to say, the lot, 2,501.49 square meters. The property is composed of a building land bounded on the East by a bamboo fence and on the North by a piece of masonry wall belonging to the adjoining owner Mr. Aramburu; the rest, that is to say, the greater part of the land lacking of any kind of enclosure. Within the lot a one-floor camarine of strong materials has been built consisting of one single body and a small abutting part, measuring: the main body 46.70 meters long by 29.30 meters wide; and the abutting part 5.40 meters long by

1.90 meters wide. It has one single floor; the walls being of
46 masonry up to a height of 1.50 meters, except the part destined to office where all the wall is of masonry; the rest of the same as well as the roof being of galvanized iron. On the front, that is to say, on its North side it has a shed along the front being 4.60 meters wide; and another on the East side of the same being 4.50 meters wide and 39.00 meters long, which does not run all along the East side but only reaches up to the abutting part of the building which is devoted to the offices. It has two doors on the front and 4 on the East, all of them opening on the lot under the sheds, being unnumbered. Its construction is solid and of the current style in the locality, for this kind of buildings.

II. Whereas by an instrument executed in this City, before the Notary Public of the same, Don Jose Ma. Rosado on February 23, 1906, the Hongkong & Shanghai Banking Corporation declared to have and keep open in favor of the firm of Aldecoa and Company of this city, a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) Philippine currency under the terms and conditions and the guaranties contained in said instrument and in another one additional to the latter, executed on March 26, 1906, before the same Notary Mr. Rosado.

III. Whereas, the contracting parties herein have agreed to amplify the security contained in the above mentioned instruments dated February 23, and March 23, 1906, with the mortgage of rights
47 of mortgage executed in its favor on the properties described in this document under letters (a), (b), (c), and (d), which are described as one single property in the manner hereinbefore done.

Therefore, the contra-ting parties herein stipulate, agree and covenant as follows:

That the credit in current account which the Hongkong & Shanghai Banking Corporation has granted to the firm of Aldecoa & Company for the sum of four hundred and seventy-five thousand pesos (P475,000) under the terms contained in the instruments dated February 23 and March 23, 1906, and whatever other amount that said Banking establishment may have granted to Messrs. Aldecoa & Company on said current account, exceeding the said amount of four hundred and seventy-five thousand pesos (P475,000) Philippine currency, is furthermore secured with the special voluntary mortgage which the firm of Aldecoa & Company executes on its right of mortgage on the property marked with letters (a), (b), (c), and (d), which is mentioned in the document hereinbefore transcribed dated October 11, 1906; it being understood that when Don Salustiano Zubeldia should register his right of title to the property mortgaged to Aldecoa & Company, this firm shall then register its mortgage and shall also register the mortgage on said mortgage executed by virtue of this document; it being also understood that Messrs. Aldecoa and Company shall file with the Court of Land Registration on these Islands and in the record of the petition of said Don

Salustiano Zubeldia for the registration of said property the
48 mortgage deed executed in its favor and also this document.

All the expenses caused by the execution of this mortgage deed and the filing thereof in the Court of Land Registration and its registration in the Registry of Property, shall be paid by the firm of Aldecoa & Company.

In witness whereof, we sign the present document in duplicate, in Manila this 22nd day of December, 1906.

(Sgd.)

ALDECOA & COMPANY.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.)

A. STEPHEN.

Signed in the presence of:

(Sgd.) ANTONIO HIDALGO.

(Sgd.) JOSÉ MORENO LACALLE.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila, this 22nd day of December, 1906; before me personally appeared Mr. Alexander Macleod and Mr. A. G. Stephen, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. Stephen exhibited to me his certificate of cedula No. A-1515678, issued by the Collector of Internal Revenue of this City, on April 7, 1906; Mr. Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof I have hereunto set my name and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

JOSE MA. ROSADO,

Notary Public.

My commission expires on December 31, 1906.

The above document has been filed at 9:00 a. m. on this date at folio 232 of Volume V of the Diary, Entry No. 223, Albay, Albay, P. I., May 20, 1907. Fees 0.75 cents. No. 1 of the Schedule.

(Sgd.)

CLARENCE McDONALD.

The registration of the property to which the foregoing refers has been suspended for the correctible defects of said property not being registered in the name of any person and of not expressing the limit of the amount secured by each one of the pieces of property in accordance with Sections 20 and 124 of the Mortgage Law, and in the meantime preventive notation has been made at pages 226, 228, 230, 232 of Volume III, of the Municipality of Tabaco, properties Nos. 595, 596, 597 and 598 Entry letter A rectified by letters B, A, A and A, respectively. Albay, Albay, P. I., May 28, 1907. Fees P51.55.

(Sgd.)

CLARENCE McDONALD,

*Provincial Treasurer and Acting**Register of Property, Albay, P. I.*

50 The above document has again been presented at 10:00 a. m. of the 22nd day of July, 1907, folio 242 bis, of Volume V of the Diary Entry No. 248.

The term of the preventive notations to which the preceding notes refer dated May 28th last at folios 227 bis, 228 bis, 230 bis and 232 bis of Volume III of Book of Tabaco properties Nos. 595, 596, and 598, entries letters C, B, B and B respectively, has been extended for 180 days in accordance with the order issued by the Court of Land Registration of the Philippine Islands, dated July 11, 1907, in the Government record No. 10.

Albay, Albay, P. I., July 29, 1907.

(Sgd.)

CLARENCE McDONALD,

*Provincial Treasurer and Acting**Register of Property, Albay, P. I.*

Fees P52.30 Philippine currency, Nos. 1 and 7 of the Schedule.

(On the margin of the first sheet of this document there are 14 Revenue stamps of P0.50 each and 5 of P0.20 each; in the second sheet there are 10 Revenue stamps of P0.20 each and in the third sheet there is 1 Revenue stamp of P10.00, another of P3.00, 6 of P1.00 and 1 of P0.50.

51

EXHIBIT "D."

Know All by These Presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of this City, as liquidator of the firm of Aldecoa & Company, of this City, now in liquidation, on account of the expiration of the term of said partnership, by virtue of an appointment made in my favor and which is registered in the Mercantile Registry of this City at folio 107 Registry 12 of Volume XVI of the Book of Companies; and Mr. A. G. Stephen, merchant, of lawful age, married and resident of this City, on behalf of the Hongkong & Shanghai Banking Corporation of which I am Manager and Director in Manila, Philippine Islands, hereby make know:-

Whereas by an instrument ratified and signed in this City before the Notary Public of the same Don Jose Ma. Rosado on February 23, 1906, the Hongkong & Shanghai Banking Corporation and Aldecoa & Company entered into an agreement by which the former binds itself to keep open in favor of the latter a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) Philippine currency subject to the conditions and securities which are prescribed more in detail in the document referred to.

Whereas, at a later date the contracting parties herein also agreed that if certain shares of the Pasay Estate Company were declared to be the property of Aldecoa & Company in liquidation, said
52 shares would be given by the debtor Company to the creditor Company as a further guarantee.

Whereas the said shares of the Pasay Estate Company Limited have become the property of said Aldecoa & Company in liquidation.

Therefore the contracting parties herein stipulate and agree as follows:

(a) Aldecoa & Company in liquidation, represented by its liquidator William Urquhart, as mortgagor, by these presents transfer and mortgage to the Hongkong & Shanghai Banking Corporation the mortgagee, the shares of the Pasay Estate Company Limited which are hereby delivered to said mortgagee for the custody and preservation thereof, said shares of the Pasay Estate Company Limited being described in detail as follows:

Certificate No. 65,	ten	shares	Nos. 663 to 642.
"	"	66	" " " 643 " 652.
"	"	67	" " " 653 " 662.
"	"	68	" " " 663 " 672.
"	"	69	" " " 673 " 682.
"	"	70	" " " 682 " 692.
"	"	71	" " " 693 " 702.

Certificate No.	72, ten shares	Nos.	703 " 712.
" "	73 " "	" "	713 " 722.
" "	74 " "	" "	723 " 732.
" "	75 " "	" "	733 " 742.
" "	76 " "	" "	743 " 752.
" "	77 " "	" "	753 " 762.
" "	78 " "	" "	763 " 772.

53

Certificate No.	79 ten shares	Nos.	773 to 782.
" "	80 " "	" "	783 " 792.
" "	81 " "	" "	793 " 802.
" "	82 " "	" "	803 " 812.
" "	83 " "	" "	813 " 822.
" "	84 " "	" "	823 " 832.
" "	85 " "	" "	833 " 842.
" "	86 " "	" "	843 " 852.
" "	87 " "	" "	853 " 862.
" "	88 " "	" "	863 " 872.
" "	89 " "	" "	873 " 882.
" "	90 " "	" "	883 " 892.
" "	91 " "	" "	893 " 902.
" "	92 " "	" "	903 " 912.
" "	93 " "	" "	913 " 922.
" "	94 " "	" "	923 " 932.
" "	95 " "	" "	933 " 942.
" "	96 " "	" "	943 " 952.
" "	97 two " "	" "	953 " 954.

(b) This mortgage is executed as additional security for the payment to the said Hongkong & Shanghai Banking Corporation, the mortgagee, of the amount for which Aldecoa & Company, the mortgagor, may be indebted to it by reason of the credit in current account which is mentioned in the first paragraph of this document and of whatever other amounts which said mortgagor may owe to the said mortgagee in the future.

54 (c) The mortgagee is hereby authorized to collect and receive from the Pasay Estate Company Limited all dividends, bonuses, or any other distribution of capital and profits which said Company may distribute on account of the said shares hereby mortgaged, issuing the corresponding receipts and acknowledgments of payment for the amounts so received and applying the amounts so collected by the mortgagee to the partial payment (that is to say, as far as they may reach) of the account of the mortgagor Aldecoa & Company in liquidation, until the final liquidation of said debt, and if there should be any excess, this excess shall then be paid to said, Aldecoa & Company in liquidation.

(d) The conditions of this obligation are: if the mortgagor, its heirs or successors, executors or administrators, should pay to the mortgagee the whole amount owed or which may be owed by them, this obligation shall be null and void.

(e) Aldecoa & Company in liquidation reserves to itself the right

to sell the shares of the Pasay Estate Company Limited above mentioned, provided that on making the sale, the purchaser shall deposit into the Bank the whole amount of purchase price; it being understood that the price so paid by the purchaser shall be applied to the reduction of the debt of Aldecoa & Company, said shares

being released in that case from all incumbrance.

55 (f) The Hongkong & Shanghai Banking Corporation acknowledges to have received the shares hereby mortgaged, to keep and preserve them in its possession as above said.

(g) This instrument is and shall be considered as additional to each and every one of the documents executed by reason of the debt of Aldecoa & Company by and between said firm of Aldecoa & Company and the Hongkong & Shanghai Banking Corporation, all of which documents are hereby declared to remain in full force and effect.

Done in the City of Manila, Philippine Islands, this 30th day of August 1907.

For the Hongkong & Shanghai Banking Corporation,
(Sgd.) A. STEPHEN.

For Aldecoa & Company, in Liquidation,
(Sgd.) WM. URQUHART.

Signed in the presence of:

_____.

We severally swear that the foregoing mortgage is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and the same is a just and valid obligation and one not entered into for the purpose
56 of fraud.

For the Hongkong & Shanghai Banking Corporation,
(Sgd.) A. STEPHEN.

For Aldecoa & Co., in Liquidation,
(Sgd.) WM. URQUHART.

UNITED STATES OF AMERICA,

City of Manila, Island of Luzon,

Philippine Islands, ss:

In the City of Manila on the 30th day of August 1907, A. D., personally appeared Messrs. William Urquhart and Alexander Stephen, the parties who signed the foregoing affidavit as to the facts therein consigned and made oath to the truth thereof before me. Said gentlemen exhibited their respective certificates of cedula No. A-1,488,603 and A-1,479,705, issued in Manila the 8th day of February and 18th of January 1907.

In witness whereof, I have hereunto set my name and affixed my official seal the date, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

EXHIBIT "E."

Know all by these presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of the City of Manila, as liquidator of the firm of Aldecoa & Company of this City, duly authorized and appointed for such office by the members of said firm as per resolutions taken on January 2nd and 24th, 1907, duly registered at sheets No. one hundred and fifty-six (156) quadruplicate, folio 107 and over of Volume sixteenth of the Book of Companies of the Mercantile Registry of Manila; and Mr. Alexander Gordon Stephen, of lawful age, married and resident of this City, as Manager and legal representative in this City of the corporation known as the Hongkong & Shanghai Banking Corporation by virtue of the letters of Attorney conferred to me in a public instrument executed on February fourteenth (14) of the year 1894, before the Notary Public of the British Colony of Hongkong Mr. G. C. C. Master, which has been duly registered in the Mercantile Registry of the City of Manila at sheet No. ten (10) triplicate, folio 56 of Volume VII of the Book of Companies, hereby declare and make it known:

Whereas Don Andres Garchitorena y Medina by virtue of a public instrument executed on the 11th day of December 1903, before the Notary Public of Manila Don Jose Ma. Rosado y Calvo, guaranteed to the firm of Aldecoa & Company of this City the balance owed by him to this Company, which document literally copied is as follows:

"Know all by these presents: That we, Don Andres Garchitorena y Medina, merchant, of lawful age, married to Doña Carmen Ortiz, domiciled in the Province of Ambos Camarines, and accidentally residing in this City, the party of the first part; and Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa & Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldés, on December, 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, the party of the second part, by this document state and agree as follows:

"1. That by an instrument No. 682 executed in this City before the Notary Public of the same Don Jose Ma. Rosado on the 29th of September 1900, Don Andres Garchitorena y Medina declared and confessed to be in debt to the firm of Aldecoa & Company in the sum of eleven thousand three hundred and nineteen pesos and twenty-six centavos (P11,319.26) which he had

received from the same as a loan, in Mexican money counted to his entire satisfaction; binding himself to pay en comandita with Messrs. Tremoya Hermanos as well as with those which may correspond him as sole and exclusive owner; binding himself from this moment to do whatever might be necessary to carry into effect the payment referred to, which was accepted by the firm of Aldecoa & Company through its representative Don Sixto Jesus Alvarez Perez, who in the same document and in the capacity in which he appears, granted and opened a credit in current account without a fixed term and independent from the debt above referred to, in favor of the same Don Andres Garchitorena and only up to the sum of twenty thousand pesos (P20,000) Mexican currency and under the other conditions specified in said instrument, and guaranteeing the credit granted by virtue of the same as well as whatever obligations which Don Andres Garchitorena contracted by virtue of the special voluntary mortgage which he executed in favor of the firm of Aldecoa & Company on the right of property which he has on the following property, to-wit:

A. Rural property, consisting of a land destined to pasture near the Visitas of Cibgon, Taytay and Pamboan in the province of Ambos Camarines, it is bounded on the North by lands of Don Eulogio Fernandez, on the East by the sea, and marshes of the State, on the South by pasture lands of Don Mariano Villamor and the river called Taytay which flows into the Visita of Pamboan, and on the West by Port Sisiran, measuring nine hundred and fifty-four hectares.

B. Another rural property, consisting of a land situated in the place designated as "Salvacion de la Visita de Higiaroy" of the town of Tigaon in the province of Ambos Camarines, the area of which measures 607 hectares 26 ares of which 486 hectares and 79 ares are in part cogon bushes and in part hemp plantations, and 124 hectares and 47 ares are cogon bushes, its boundaries being as follows: on the North, woods of the State, hemp plantations of Don Paciano Badirian, Don Luis Jallores, the creek of Tinangay and creek of Talanquiso; on the South, river Osini, the confluence of river Daso and Osini and the said river Daso; on the East river Cigaren and land of Don Juan Filipino, and on the west, land of Pedro Barrubia and said river Osini. This property is registered at folios 16 and 8, book 1st. and 1st. of the towns of Caramoan and Tigaon respectively, appearing at folios 30 bis and 25 bis, 247 to 248, Second inscriptions, in the Registry of Property of Camarines Sur.

"2. That by a public instrument No. 99 executed in this City before the same Notary Mr. Rosado, the firm of Aldecoa & Company on February 8, 1901, granted and opened a new credit in current account up to the sum of twenty thousand pesos (P20,000) as an extension of that which is mentioned in the preceding paragraph and independent from the debt of eleven thousand three hundred and nineteen pesos and twenty-six centavos (P11,319.26) which in the same mention is made of, in favor of the said Don Andres Garchitorena and under the basis

and conditions stipulated and set forth in said instrument, guaranteeing said credit with the special voluntary mortgage on the following property:

C. Rural property, consisting of a parcel of land on which there are built a house of mixed materials of timber and stone with nipa roofs destined to living quarters and a camarine also of mixed materials of timber, stone, mortar, iron and nipa destined to store house or deposit of products within which there is a hemp press: it is situated in the town of Sognay of the province of Ambos Camarines, and is bounded on the North and East, on which side it measures approximately 73 meters, by the road of the visita of Nato which runs along the sea; on the South, at which side it measures 40 meters approximately, by the road which leads to the town of Sagnar and on the West and North, on which sides it measures 70 meters
62 and 25 meters approximately, by a creek without name and the lot of Manuel Valencia; the house measures 12 meters in front by 11 meters deep and the camarine 30 meters front and 12 meters deep.

"3. That I, Andres Garchitorena y Medina as a result of what is stipulated by me with Messrs. Aldecoa & Company according to the documents mentioned in the preceding paragraphs, on this date I owe to said gentlemen the sum of sixty-one thousand nine hundred and fifteen pesos and seven centavos (P61,915.07) and in order that it may appear in an indisputable manner, I execute this document by virtue of which most solemnly state: that I am indebted to the firm of Aldecoa & Company, of this City, in the total sum of sixty-one thousand nine hundred and fifteen pesos and seven centavos (P61,915.07) which I have received from the same in cash, counted to my entire satisfaction; for which reason I execute in their favor the acknowledgment of having received said sum in the most firm and valid manner which may be convenient to their rights and security.

"4. That said amount of sixty-one thousand nine hundred and fifteen pesos and seven cents (P61,915.07) Mexican currency, shall earn a reciprocal interest of six per cent (6%) per annum, beginning from this date, to be settled at the end of every quarter.

"5. I, Don Andres Garchitorena y Medina, bind myself to pay to the firm of Aldecoa & Company the sum of sixty-one thousand nine hundred and fifteen pesos and seven cents (P61,915.07) which I owe the same at the following rate and in the following manner:

(a) Ten thousand pesos on March 30, 1904;

(b) And the balance of fifty-one thousand nine hundred and fifteen pesos and seven cents by partial instalments of five thousand pesos each to be paid at the end of every quarter from the date of the payment of the ten thousand pesos referred to in the above paragraph, with the exception of the last instalment which shall be for six thousand nine hundred and fifteen pesos and seven cents.

"6. Failure to pay one instalment shall give a right to the creditor to consider the rest of the instalments due and payable and, therefore, it shall, from that date, have a right to demand from me, An-

dres Garchitorena, the total sum of what I may owe at the time when I shall fail to comply with my obligation.

"7. Whatever obligations I, Andres Garchitorena, have contracted by reason of the documents or instruments above referred to, shall remain in force in every part thereof, while this debt may exist.

"8. That to secure the amount which I now owe and whatever obligations I have contracted, I, Andres Garchitorena, confirm and declare to be in force the special voluntary mortgages which I ex-

64 ecuted on the different pieces of property hereinbefore described, the property marked with letter "A" being security up to the sum of eighteen thousand pesos (P18,000) Mexican currency; that described under letter "B" being security for the sum of twenty-six thousand nine hundred and fifteen pesos and seven cents (P26,915.07) Mexican currency; and that described under letter "C" for the sum of seventeen thousand pesos (P17,000) Mexican currency, each one of the said pieces of property being liable, besides, for the sum of three hundred pesos (P300.) Mexican currency for the costs and judicial expenses in case of foreclosure.

"9. That by common agreement with Mr. Alexander S. Macleod, in the capacity in which he appears, I, Andres Garchitorena, fix the value of the mortgaged property as follows: that marked with letter "A" in the sum of twenty thousand pesos (P20,000) Mexican currency; that described under letter "B" in the sum of thirty thousand pesos (P30,000) Mexican currency; and that described under letter "C" in the sum of twenty thousand pesos (P20,000) Mexican currency, which value shall be the appraised price for the only auction which in case Don Andres Garchitorena should fail to comply with all or any of his obligations must take place in accordance with the provisions of the existing mortgage law and the procedure established in the same, the general regulations for the execution thereof and the other legal provisions which might be promulgated in the future on the premises, waiving therefore any other valuation of said property and the action which there might be towards this end.

65 "10. I, Don Andres Garchitorena, bind myself to register my right of property and of possession which I have on the property above described, as well as the mortgages which I have executed thereon in the new Registry of the property within the term of six months from this date; it being understood that if I should fail to proceed to said registration, the creditor company shall have the right, at the expiration of the said six months, to demand from me the full amount of my debt as well as the interest thereon.

"11. That I, Don Andres Garchitorena, shall not sell any of the property mortgaged without the knowledge and consent of the creditor company, and even in that case, I shall have to pay to said company as soon as the sale takes place the amount which I may receive as purchase price, in order to pay in part with said amount the sum which I might be owing at the time of the sale.

"12. I, Don Alejandro S. Macleod, in the capacity in which I appear herein, accept this document as to each and every one of its parts.

"13. That we submit ourselves to the jurisdiction of the judges and the Courts of this City for whatever judicial question might arise by reason of the non-compliance of our obligations, waiving therefor expressly the forum of our respective domicile.

"In witness whereof, we sign the present document in
66 Manila, in triplicate, this 11th day of December, 1903.

(Sgd.)

ANDRES GARCHITORENA,
ALDECOA & COMPANY.

(Sgd.)

Signed in the presence of:

(Sgd.) POT. VILL. BERNABÉ.

(Sgd.) V. A. MASALAC.

"UNITED STATES OF AMERICA,

City of Manila,

Island of Luzon, Philippine Islands:

In the City of Manila, this 11th day of December, 1903, before me appeared Don Andres Garchitorena y Medina and Mr. Alexander S. Macleod, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. Andres Garchitorena exhibited his certificate of cedula No. 126077 issued in Nueva Caceres on April 3rd, 1903, Mr. Alexander S. Macleod not exhibiting any for reason of being exempt from said certificate being as he is over fifty-five years old.

In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

LDO. JOSE MA. ROSADO y CALVO,

Notary Public.

My commission expires on January 1, 1905."

67 Whereas, said Don Andres Garchitorena y Medina still owes the firm of Aldecoa & Company the sum of twenty thousand two hundred and eighty-two pesos and nineteen centavos (P20,282.19) Philippine currency, being the balance of the debt acknowledged in the foregoing instrument;

Whereas, the mortgages executed in favor of the creditor in the above said instrument of December 11, 1903, are still in force with the exception of that on the property described under letter "C" which was at a later date acquired by the same firm of Aldecoa & Company;

Whereas, both debtor and the creditor, on February 23, 1907, agreed to modify the liability fixed for the premises described under letters "A" and "B," distributing between them the said remainder or balance of twenty thousand two hundred and eighty-two pesos and nineteen centavos (P20,282.19) Philippine currency, executing the said agreement by a letter which on said date the debtor wrote to the creditor Aldecoa & Company, which letter reads literally as follows:

“MANILA, February 23, 1907.

Messrs. Aldecoa & Company, in Liquidation.

GENTLEMEN: This is to ask you that the balance of P20,282.19 which still I am indebted to you, be distributed between the property which I have mortgaged to you for the security of the payment of what I owe you, according to the instrument of December 11, 1903, in the following proportion:

The property which in the deed of December 11, 1903, is described under letter “A” shall be liable for the sum of P2,000 principal and interest thereof, and that described under the letter “B” shall be liable for the sum of P18,282.19 principal and corresponding interest.

To this effect I earnestly beg you to please apply the payments I have heretofore made to reduce the mortgage in the proportion hereinbefore stated, so that the balance of P20,282.19 which I actually owe you, be distributed between the mortgaged property in the proportion above indicated.

I remain yours very sincerely,

(Sgd.)

ANDRÉS GARCHITORENA.”

Whereas, by public instrument executed in this City before the Notary Public of the same Don Jose Ma. Rosado on February 23, 1906, the Hongkong & Shanghai Banking Corporation granted to the firm of Aldecoa & Company of this City a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) Philippine currency, under the terms and conditions and securities contained in said instrument and in another additional instrument executed on March 23, 1906, before the same Notary Mr. Rosado;

Whereas, the firm of Aldecoa & Company by reason of the credit which was granted to it, by said instrument of February 23, 1906, owes to the Hongkong & Shanghai Banking Corporation at the present time the sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency;

Whereas, the creditor Company desires that new securities be given in addition to those given by the mentioned instruments of February 23, and March 23, 1906, and the contracting parties herein have agreed to enlarge said securities with the mortgage of the real right of mortgage executed in favor of the firm of Aldecoa & Company on the property described under letters “A” and “B;”

Therefore, the parties hereto, stipulate, agree and covenant as follows:

That as additional security for the payment of said sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency, which the firm of Aldecoa & Company in Liquidation owes at present to the Hongkong & Shanghai Banking Corporation, I, William Urquhart, in the capacity above stated, by these presents do constitute voluntary special mortgage on the mortgage right which the Com-

pany which I represent has on the property described under letters "A" and "B" in the foregoing instrument of December 11, 1903; it being understood that the present mortgage shall depend from the resolution of the prior mortgage; and it being also understood that the mortgage of the real right of mortgage on the property described under letter "A" shall be liable for the sum of two thousand pesos (P2,000) Philippine currency, principal and interest thereof, and that of the property described under letter "B" shall be liable for the sum of eighteen thousand two hundred and eighty-two pesos and nineteen centavos (P18,282.19) Philippine currency principal and interest.

All the expenses caused by the execution of this document as well as the expenses for the filing of the same in the Registry of the Property and the registration thereof in the Registry of Deeds, shall be born- exclusively by the firm of Aldecoa & Company.

I, Alexander Gordon Stephen, as Manager and legal representative of the Hongkong & Shanghai Banking Corporation of this City, accept this document in the precise terms in which it is executed.

In witness whereof, we sign these presents in Manila, this 31st day of March, 1907.

ALDECOA & CO., *In Liquidation,*
 (Sgd.) By WM. URQUHART.
 For the Hongkong & Shanghai Banking Corporation,
 (Sgd.) A. G. STEPHEN, *Manager.*

Witnesses:

(Sgd.) JOSE MORENO LACALLE.
 (Sgd.) JOHN W. HAUSSERMANN.

71 UNITED STATES OF AMERICA.
Philippine Islands, City of Manila, ss:

In the City of Manila, this 13th day of June, 1907, personally appeared before me Mr. William Urquhart on behalf of the firm of Aldecoa & Company in Liquidation, and Mr. Alexander Gordon Stephen as Manager and agent of the Hongkong & Shanghai Banking Corporation of this City, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. William Urquhart exhibited his cedula No. A-1,488,603 issued in Manila on February 8, 1907, and Mr. Stephen exhibited his No. A-1,479,705 issued in Manila on January 18, 1907.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

(P0.20 Internal Revenue stamp.)

The above document has been registered in regard to property marked with letter "B" at folios 249 and 250 bis of Volume III Book

I of Tigaon property No. 608, IV inscription extended; and in regard to property marked with letter "A" at folio 26 bis of Volume XVI of Book I of Caramoan, property No. 11, concised inscription IV, Nueva Caceres, September 3, 1907.

(Sgd.)

JULIAN OCAMPO,
Registrar of Deeds.

A stamp which reads: Registry of Deeds, province of Ambos Camarines, P. I.

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EXHIBIT "F."

Diary No. 6341.

Know all by these presents: That we, William Urquhart, merchant, of lawful age, single and resident of the City of Manila, as Liquidator of the firm of Aldecoa & Company of this City, duly authorized and appointed for such office by the members of said firm as per resolutions taken on January 2nd and 24th, 1907, duly registered at sheet No. one hundred and fifty-six (156) quadruplicate folio 107 and over, of Volume sixteenth of the Book of Companies of the Mercantile Registry of Manila; and Mr. Alexander Gordon Stephen, of lawful age, married and resident of this City, as Manager and legal representative in this City of the corporation known as the Hongkong & Shanghai Banking Corporation by virtue of the letters of Attorney conferred to me in a public instrument executed on February fourteenth (14) of the year 1894, before the Notary Public of the British Colony of Hongkong Mr. G. C. C. Master, which has been duly registered in the Mercantile Registry of the City of Manila at sheet No. ten (10) triplicate, folio 56 of Volume VII of the Book of Companies; hereby declare and make it known:

Whereas, by a document executed on June 8, 1904, before Don Jose Ma. Rosado y Calvo, Notary Public of the City of Manila, Don Liborio Tremoya, as managing partner with power to sign in the name of the mercantile firm of "Tremoya Hermanos, domiciled in Lagonoy, Province of Camarines, in order to secure the payment of the sum of forty-three thousand one hundred and seventeen pesos and forty centavos (P43,117.40) Philippine currency which said firm of Tremoya Hermanos came to be indebted to the firm of Aldecoa & Company of Manila, as per balance made and taken on May 31, 1904, executed in favor of the firm of Aldecoa & Company a voluntary special mortgage on the following property owned by the firm Tremoya Hermanos:

A. Urban property, composed of a living house of stone on the lower floor and timber on the upper floor, and camarines with hemp press and one store house, all of it built on one parcel of land enclosed within a masonry wall, situated in the town of San Jose, Province of Ambos Camarines, Philippine Islands. The land on which the above described property is built measures 19 ares, its front measuring 50 meters. It is bounded on the North by Milaor Street, on the South by church lands, on the East by the lot of Don

Tomas R. Perez and on the West by San Vicente Street. It was purchased from Don Andres Garchitorea. This property was appraised in twenty thousand pesos (P20,000) Philippine currency and its liability was fixed in the sum of sixteen thousand nine hundred and seventeen pesos (P16,917.00) Philippine currency, 74 for principal and interest, plus seven hundred pesos (P700.00) Philippine currency for the payment of costs and expenses in case of judicial foreclosure.

Preventive notation made at Vol. 74, pages 237 to 239, property No. 767 extensive notation letter B.

B. Urban property, situated in the town of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of a camarine which measures 7 meters 65 centimeters in depth, being built of masonry and located 60 centimeters from the eastern boundary of the lot, that is to say, on the side adjoining the lot of Don Quintin Barrameda and 3 meters from the south boundary of the lot, that is to say, calle Milaor; the area of the lot, on which this property is built, measures 8 ares, 68 centares, bounded on the North by the lot of Don Quintin Barrameda and that of the estate of Don Manuel Achondo, on the South by calle Milaor and on the East by the lot of Don Quintin Barrameda and on the West by calle San Vicente. It was purchased from Don Andres Garchitorea. This property was appraised in eight hundred pesos (P800.00) Philippine currency and its liability was fixed in the sum of five hundred pesos (P500.00) Philippine currency principal and interest, plus one hundred pesos (P100.00) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Preventive notation made at Vol. 74 pages 242 and 243 property No. 768 short notation letter B.

75 C. Urban property, situated in the Municipality of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of one kiosko measuring 10 meters in front by 6 meters in depth, being constructed of timber and galvanized iron. The area of the lot of this property measures 38 ares 90 centares, bounded on the North by the lot of the estate of Don Manuel Achondo, on the South by calle Milaor, on the East by calle San Vicente and on the West by the lot of Don Andres Garchitorea. It was purchased from Don Andres Garchitorea. This property was appraised in eight hundred pesos (P800) Philippine currency and the liability thereof was fixed in the sum of five hundred pesos (P500) principal and interest plus one hundred pesos (P100.00) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 74 pages 246 and 247 property No. 769 concised notation letter B.

D. Urban property, situated in the Visita of Sabang of the Municipality of San Jose, Province of Ambos Camarines, Philippine

Islands, consisting of a camarine of masonry and also a house of masonry in the lower floor and timber in the upper floor, covering a space in the lot measuring 99 square meters and 65 square centimeters. The lot measures 1 hectare 25 ares and 80 centares; bounded on the North by the road that leads to San Jose; on the South by

76 the Pacific Ocean; on the East by the lot of Don Andres Garchitorena and on the West by the lot of the estate of Don Manuel Achondo. Part of the same was built and the rest was purchased from Don Andres Garchitorena. This house and lot was appraised in fifteen thousand pesos (P15,000) Philippine currency and in the said deed of June 8, 1904, its liability was fixed in the sum of ten thousand pesos and forty centavos (P10,000.40) Philippine currency plus seven hundred pesos (P700) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 74 pages 250 and 251 property No. 770, concised notation letter B.

E. A *late* in Tigaon in the town of the same name in the side of Talooon, Province of Ambos Camarines, appraised in twenty thousand pesos (P20,000) Philippine currency, its liability being fixed, in the above mentioned instrument, in sixteen thousand pesos (P16,000) Philippine currency plus five hundred pesos (P500.00) for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 26 and 27, property No. 614, concised notation letter B.

F. All the *lates* which are located in the Visitas of Payatan, La Luz and Pinalabanan, appraised in eight thousand pesos (P8,000) Philippine currency, and in said instrument their liability was fixed in five thousand pesos (P5,000) plus five hundred pesos (P500) Philippine currency in case of litigation.

Notation made at Vol. 75 pages 226 and 227, property No. 683, concised notation letter B.

77 G. House and lot in Tingaon appraised in eight hundred pesos (P800.00) Philippine currency, their liability being fixed in the above named instrument in five hundred pesos (P500) plus one hundred pesos (P100) Philippine currency for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 29 to 31, property No. 615 concised notation letter B.

H. House and warehouse of galvanized iron situated in the town of Sanay, Province of Ambos Camarines, appraised in one thousand pesos (P1,000) Philippine currency and in said instrument of June 8, 1904, their liability was fixed in eight hundred pesos (P800.00) plus one hundred pesos (P100.00) for costs and expenses in case of litigation.

Notation made at Vol. 38 Book II of Langay, folios 224 bis and 225, property No. 350, concised notation letter B.

I. Three hemp plantations in Bayo in the town of Goa, Province of Ambos Camarines, appraised in seven thousand pesos (P7,000) Philippine currency, their liability being fixed by said instrument in the sum of five thousand pesos (P5,000) plus five hundred pesos (P500) for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 230 and 231, property No. 684, concised notation letter B.

J. Rice paddies in San Jose de Lagonoy, Province of Ambos Camarines, appraised in nine hundred pesos (P900.00) Philippine currency, their liability being fixed in said instrument in the sum of four hundred pesos (P400.00) Philippine currency plus one hundred pesos (P100.00) for the payment of costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 75 pages 244 and 245, property No. 771, concised notation letter B.

Whereas, in the same instrument of June 8, 1904, above referred to, Don Liborio Tremoya, in his own name and right, in guarantee of his personal debt, which according to the balance made on May 31, 1904, came up to the sum of seventy-three thousand four hundred and sixty-three pesos and fifty-four centavos (P73,463.54) Philippine currency, the acknowledgment of which was set down in said instrument, executed a voluntary special mortgage in favor of the firm of Aldecoa & Company on the following property of his own.

K. Urban property, that is to say, a lot situated in calle Daquitán in the barrio of Tabuco, Municipality of Nueva Caceres, Province of Ambos Camarines, Philippine Islands, measuring 2,115 square meters, bounded on the right of its entrance by Ana Jacobo heir of Feliciano Jacobo, Isidoro Francisco; on the left by a public street without name which leads to the camarine for the loading and unloading of the steamers, on its front by calle Daquitán and on the back by Bonifacia Regalado. Within which lots there is a building constructed with strong materials with a hemp press. The lot was purchased from Don Jose Gallietabeitia, according to an instrument No. 75 executed on September 24, 1901, before the Notary public of Nueva Caceres, Province of Ambos Camarines, Don Roman Flordelisa; the building was built by the owner. Said property is registered in the old Registry of the Property of said Province at Volume II Book I of Nueva Caceres, folio 40 his property No. 12, inscription IV; this property was appraised in forty-five thousand pesos (P45,000) Philippine currency and its liability was fixed in forty-four thousand pesos (P44,000) Philippine currency principal and interest plus five hundred pesos (P500.00) for costs and expenses in case of litigation.

Registered at Vol. 63 of the Archive which is Book 5 of Nueva Caceres, folio 209 and 209 bis and 210, property No. 12, extensive inscription No. 7.

Whereas, Don Liborio Tremoya of his own right and as Manager of the mercantile firm Tremoya Hermanos bound himself and promised to pay to Aldecoa & Company on account of the two debts above mentioned, the sum of twelve thousand pesos (P12,000) per year until both debts were fully paid, the creditor reserving the right to apply these payments to these two debts in the proportion which it might desire or to apply the full sum paid to the partial payment of one of the two debts if the creditor should deem it convenient to do so. It was also agreed that both debts should earn no interest, on condition that the debtors should comply most strictly with said partial payments and on the contrary said debt should earn an interest at the rate of eight per cent (8%) per annum from the last installment which the debtor should have failed to pay.

80 Whereas, by public instrument executed in this City before the Notary Public of the same Don Jose Ma. Rosado y Calvo on February 23, 1906, the Hongkong & Shanghai Banking Corporation granted the firm of Aldecoa & Company of this City, a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) under the terms and conditions and guaranties contained in said instrument and in another additional one executed on March 23, 1906, before the same Notary Mr. Rosado.

Whereas the firm of Aldecoa & Co. by reason of the credit opened in its favor by virtue of the instrument dated February 23, 1906, is at present indebted to the Hongkong & Shanghai Banking Corporation the sum of four hundred seventy-five thousand five hundred ninety-four 47/100 (P475,594.47) pesos, Philippine Currency.

Whereas, the creditor Company desires that new securities be given in addition to those given by the mentioned instruments of February 23 and March 23, 1906, and the contracting parties herein have agreed to enlarge said securities with the mortgage of the real right of mortgage executed in favor of the firm of Aldecoa & Company on the property described under letters "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K;"

Therefore, the parties hereto stipulate, agree and covenant as follows:

That as additional security for the payment of said sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency which the firm of Aldecoa & Company in Liquidation owes at present to the Hongkong & Shanghai Banking Corporation, I William Urquhart, in the capacity above stated, by these presents do constitute voluntary special mortgage on the mortgage right

81 which the Company which I represent has on the property described under letters "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," in the said instrument of June 8, 1904, it being

understood that the present mortgage shall depend from the resolution of the prior mortgagee.

The mortgage of the real right of mortgage on each one of the above described properties, shall be liable for the following amount:

That right of mortgage corresponding to the property described under letter "A," shall be liable in the sum of sixteen thousand nine hundred and seventeen pesos Philippine currency	P16,917.00
That corresponding to the property described under letter "B" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "C" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "D" for the sum of ten thousand pesos and forty centavos Philippine currency	P10,000.40
That corresponding to the property described under letter "E" for the sum of sixteen thousand pesos Philippine currency	P16,000.00
That corresponding to the property described under letter "F" for the sum of five thousand pesos Philippine currency	P5,000.00
82 That corresponding to the property described under letter "G" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "H" for the sum of eight hundred pesos Philippine currency	P800.00
That corresponding to the property described under letter "I" for the sum of five thousand pesos Philippine currency	P5,000.00
That corresponding to the property described under letter "J" for the sum of four hundred pesos Philippine currency	P400.00
And that corresponding to the property described under letter "K" for the sum of forty-four thousand five hundred pesos Philippine currency	P44,500.00

Mr. William Urquhart in the capacity above stated states also that none of the mortgage credits referred to in this instrument have been alienated, sold, ceded, nor encumbered in any manner.

All the expenses occasioned by the execution of this document as well as for the filing of the same in the Court of Land Registration and registration of the same in the Registry of Deeds and those for the cancellation when the same be made shall be exclusively on the account of the firm of Aldecoa & Company in Liquidation.

83 I, Alexander Gordon Stephen, as Manager and Agent in this City of the Hongkong & Shanghai Banking Corporation accept this instrument in the precise terms in which it has been executed.

In witness whereof, we sign these presents, in Manila, this 31st day of March 1907.

ALDECOA & CO.,
In Liquidation,

(Sgd.)

By WM. URQUHART.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.)

A. G. STEPHEN, *Manager.*

Witnesses:

(Sgd.) JOSE MORENO LACALLE.

(Sgd.) JOHN W. HAUSERMANN.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila this 13th day of June, 1907, personally appeared before me Mr. William Urquhart on behalf of the firm of Aldecoa & Company in Liquidation, and Mr. Alexander Gordon Stephen as Manager and agent of the Hongkong & Shanghai Banking Corporation of this City, whom I know to be the persons who executed the foregoing document and ratified the same as
84 their own free and voluntary act and deed. Mr. William Urquhart exhibited his cedula No. A-1488603 issued in Manila on February 8, 1907, and Mr. Stephen exhibited his No. A-1479705 issued in Manila on January 18, 1907.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,

Notary Public.

My commission expires on December 31, 1908.

(A P0.20 Internal Revenue Stamp.)

There is another seal which reads as follows: Registry of Deeds—Province of Ambos Camarines—Philippine Islands.

The above document has been registered in regard to property marked with letter "K" at folio and Volume expressed on the margin of said property.

The registration of this document has been suspended in regard to the pieces of property marked with letters "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J," by reason of the defect of there being no registration but only a preventive notation of the right of mortgage constituted on said property in favor of the firm of Aldecoa & Company on which right of mortgage the new encumbrance of a sub-mortgage has been constituted in favor of the Hongkong & Shanghai Banking Corporation. And this defect being susceptible of correction, at the instance of the interest of parties, I have made
85 a preventive notation of the preceding document at the folios and Volume expressed on the margin of the description of each one of these properties, returning the present document

to the interested parties so that within the term of sixty days beginning from this date, they may correct the defect. Nueva Caceres, Ambos Camarines, September 25, 1907.

(Sgd.)

JULIAN OCAMPO,

Registrar of Deeds.

Fees P118.25, Nos 2 and 7 Sch.

An extension from sixty to 180 days has been noted by order of the Court of Land Registration, dated October 22, 1907, in regard to the preventive notation of the properties described in the preceding document at Books, Volumes and folios as follows: Parcel "A" at folios 1, 2 and 3 of Vol. 76, property No. 767 notation letter D; "B" at folios 244, Vol. 74 and 11 of Vol. 76, property No. 768, notation letter D; "C" at folios 242 and 248 Vol. 74, property No. 769, notation letter D; "D" at folios 252 Vol. 74 and 15 of Vol. 76, property No. 770, notation letter D; "E" at folios 28 Vol. 75 and 19 Vol. 76 property No. 614 notation letter D; "F" at folios 228 Vol. 75 and 23 Vol. 76 property No. 683, notation letter D; "G" at folios 32 and 33 Vol. 75, property No. 615, notation letter D; "H" at folios 225 to 226 Vol. 38, property No. 315, notation letter D; "I" at folios 232 to 233 Vol. 75, property No. 684, notation letter D; and "J" at folios 246 to 247 Vol. 75, property No. 771, notation letter D. Nueva Caceres, January 8, 1908.

(Sgd.)

TOMAS FLORDELISA,

*Acting Provincial Fiscal, Registrar
of Deeds, Ambos Camarines.*

There is a seal which reads: Registry of Deeds—Province of Ambos Camarines—Philippine Islands.

Fees P80.55 No. 2 and 7 Sch.

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EXHIBIT "G."

Agreement.

Whereas, on the 23rd day of February, 1906, Aldecoa & Co., a co-partnership duly registered in the Mercantile Registry of the City of Manila, and the Hongkong & Shanghai Banking Corporation, a corporation duly organized under the laws of Great Britain, and registered in the City of Manila, made and executed a certain escritura, a copy of which is hereto attached; and

Whereas, by the terms of said escritura the Hongkong & Shanghai Banking Corporation opened a credit in favor of said Aldecoa & Co. to the extent of P475,000.00 under the terms and conditions therein mentioned; and

Whereas, by the terms of said agreement said Aldecoa & Co. were authorized to draw checks on said credit solely for the purpose of obtaining funds to be used for the purchase of hemp, rice and other products of the Philippine Islands; and

Whereas, Aldecoa & Co., from time to time since the 23rd day of February, 1906, utilized said credit by obtaining funds, part of

which funds were delivered and advanced to the various dealers in produce in the provinces of the Philippine Islands to be used by said dealers for the purpose of buying hemp and other products of the

Philippine Islands to be consigned to the said Aldecoa & Co. for sale on account of said dealers; and that said moneys were received by said dealers for the purpose of purchasing in the provinces hemp and other products of the Philippine Islands, to be shipped and consigned to said Aldecoa & Co., for and on account of said dealers; and

Whereas, by paragraph 5 of said escritura hereto attached, marked "A," the said Aldecoa & Co. obligated and bound itself to deliver to the Hongkong & Shanghai Banking Corporation the proceeds of the sales of said hemp and other products of the Philippine Islands so shipped and consigned to said Aldecoa & Co. by said dealers and consignors of said Aldecoa & Co., which proceeds were to be applied in partial payment of the indebtedness of said Aldecoa & Co. to the said Bank; and

Whereas, on the 30th day of November, 1906, the debit balance of Aldecoa & Co. at said Bank, created under and by virtue of said escritura dated February 23, 1906, amounted to P515,519.54; and

Whereas, on said 30th day of November, 1906, as additional security for the payment of said debit balance of said Aldecoa & Co. the said Aldecoa & Co. hypothecated to said Hongkong & Shanghai Banking Corporation the debts owing to Aldecoa & Co. by its provincial debtors, which said debt amounted in the aggregate to P522,600 and were to be liquidated by the respective provincial debtors by shipping and consigning to said Aldecoa & Co. hemp of the value of the respective amounts due from said debtors; and

Whereas, the overdraft of Aldecoa & Co., created under and by the terms of said escritura, marked "A," on the 31st day of December, 1906, amounted to P516,517.98; and

Whereas, on the 31st day of December, 1906, the balance due and owing said Aldecoa & Co. by its provincial debtors so hypothecated to said Bank amounted in the aggregate to the sum of P538,976.80 the name of which provincial debtors and the respective amounts owing by each are as follows:

Martin de Achaval	P22,855.26
Salustiano Zubeldia	121,709.53
Viuda e Hijos de F. Escaño.....	68,511.54
Francisco Rodriguez	9,700.51
Carranceja y Portilla.....	6,835.24
Manuel Veloso	129,748.65
Acordagoicoechea Hermanos	91,188.39
Miguel Pelaez	88,427.68
	<hr/>
	P538,976.80

Whereas, the above named debtors were duly notified of said hypothecation; and

Whereas, said Aldecoa & Co. was unable to reduce said overdraft

on said 31st day of December, 1906, to the sum of P425,000.00 as provided in said escritura marked "A;" and

Whereas, said Aldecoa & Co on the 31st day of December, 1906, was declared in liquidation, and W. Urquhart, was duly elected as the liquidator of said Aldecoa & Co.; and

89 Whereas, since the 31st day of December, 1906, the above named debtors have ceased to ship and consign hemp to said Aldecoa & Co. or the liquidator thereof; and

Whereas, by said cessation of shipments and consignments of hemp and products by said debtors to said Aldecoa & Co., or its liquidator, they, the said provincial debtors, and each of them, became obligated to pay in cash to said Aldecoa & Co., in liquidation, the sums due and owing said Aldecoa & Co.; and

Whereas, it is the duty of said liquidator to collect from said debtors the various sums due and owing said Aldecoa & Co.; and

Whereas, under and by virtue of paragraph 8 of said escritura hereto attached, marked "A," the said sums collected from the said provincial debtors are to be paid to the Hongkong & Shanghai Banking Corporation to be applied by said Bank to the credit of said Aldecoa & Co. in partial payment of the overdraft of said Aldecoa & Co. according to the terms of said escritura;

Now, Therefore, for the purpose of carrying into effect the terms of said escritura, and to make effective the hypothecation executed by said Aldecoa & Co. on the 30th day of November, 1906, the said William Urquhart, the duly authorized liquidator of Aldecoa & Co., does hereby assign to said Hongkong & Shanghai Banking Corporation all the debts due and owing to said Aldecoa & Co. by its provincial debtors as follows:

90	Martin de Achaval.....	P22,855.26
	Salustiano Zubeldia	121,709.53
	Viuda e Hijos de F. Ecaño.....	68,511.54
	Francisco Rodriguez	9,700.51
	Carranceja y Portilla.....	6,835.24
	Manuel Veloso	129,748.65
	Acordagoicochea Hermanos	91,188.39
	Miguel Pelaez	88,427.68
		<hr/> P538,976.80

That said assignment of said above named debts is made to the said Hongkong & Shanghai Banking Corporation for the purpose of collection, with the obligation on the part of said Hongkong & Shanghai Banking Corporation to apply the net proceeds of said collections to the credit of said Aldecoa & Co. to the said Hongkong & Shanghai Banking Corporation according to the terms of the escritura hereto attached, marked "A."

For the purpose of carrying into effect said assignment, the said W. Urquhart, of the City of Manila, Philippine Islands, the duly elected liquidator of Aldecoa & Co., hereby makes, constitutes and appoints A. G. Stephen, Acting Manager of the Hongkong & Shanghai Banking Corporation, my true and lawful attorney in fact, for

me and in my name, place and stead, and to my use as liquidator of Aldecoa & Co., to ask, demand, sue for and receipt for all sums of money, debts and demands whatsoever, which are or shall be due, owing and belonging to Aldecoa & Co., or its successors and assigns, or detained from Aldecoa & Co. or me as the liquidator thereof, by each of the above named provincial debtors of Aldecoa & Co., or his or its legal representatives, successors or assigns; giving unto my said attorney full power to do everything whatsoever requisite and necessary to be done in the premises as fully as Aldecoa & Co., or I as the liquidator thereof, could if personally present, with full power of substitution; hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue thereof.

It is understood and agreed by and between the said W. Urquhart, as the liquidator of Aldecoa & Co., and the Hongkong & Shanghai Banking Corporation that the actual and necessary expenses incurred in the collection of said debts, including attorney's fees, which fees shall not exceed 10% of the amount recovered, shall be for the account of Aldecoa & Co., and that the net proceeds of such collections, after deducting all expenses of such collections, shall be paid to the Hongkong & Shanghai Banking Corporation and applied on the indebtedness of said Aldecoa & Co. to said Bank.

It is further understood and agreed by and between the parties hereto that nothing herein contained shall in any wise be construed to alter the terms of said escritura or to release Aldecoa & Co., its sureties, or either of them, from any of the obligations incurred under and by virtue of said escritura, marked "A," and made a part hereof, and that the only purpose of this agreement is to make effective the obligations assumed by said Aldecoa & Co. to pay over to said Bank, to be applied to the indebtedness of said firm of Aldecoa & Co. to said Bank, the debts due said Aldecoa & Co. from its provincial debtors, when collected, as provided in said escritura hereto attached, marked "A," and the hypothecation executed on said 30th day of November, 1906, and to give unto the Agent of said Bank full power to collect said debts and apply the proceeds thereof to the liquidation of the overdraft of said Aldecoa & Co.

In witness whereof, we have hereunto set our hands and seals this thirtieth day of January, 1907.

ALDECOA & COMPANY,

In Liquidation,

(Sgd.) By WM. URQUHART, *Liquidator.*

THE HONGKONG & SHANGHAI
BANK'G CORP'N,

(Sgd.) By A. G. STEPHEN, *Acting Manager.*

Witness:-

(Sgd.) JOHN W. HAUSSEMAN.

(Sgd.) JOSE MORENO LACALLE.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

Be it remembered that on this 30th day of January, 1907,
 93 before me the undersigned, a Notary Public in and for the
 City of Manila, Philippine Islands, personally came W.
 Urquhart, known to me to be the same person who executed the fore-
 going agreement, and acknowledged that he executed said agree-
 ment as his free and voluntary act and deed for and on behalf of the
 said Aldecoa & Co., in liquidation, as the duly authorized and elected
 liquidator thereof. Cedula A-1,330,176, Jan'y 25, 1906, Manila, P. I.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires December 31st, 1908.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

Be it remembered that on this 30 day of January, 1907, before
 me the undersigned, a Notary Public in and for the City of Manila,
 Philippine Islands, personally came A. G. Stephen, known to me to
 be the same person who executed the foregoing agreement, and ac-
 knowledged that he executed said agreement as his free and voluntary
 act and deed for *an* on behalf of the said Hongkong & Shanghai
 Banking Corporation as the Acting Manager thereof. Cedula A-
 1,479,705, Jan'y 18, 1907, Manila, P. I.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires December 31st, 1908.

94 UNITED STATES OF AMERICA,

Philippine Islands:

Court of First Instance.

No. 8519.

HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff,

vs.

ALDECOA & COMPANY, in Liquidation, et al., Defendants.

Summons.

Stamped: Sheriff's Office Manila, April 1, 1911. Filed at 9:15
 a. m.

To Aldecoa & Co. (in liquidation), Isabel Palet, widow of Aldecoa; Zoilo Ibañez de Aldecoa, Joaquín Ibañez de Aldecoa, Alejandro Macleod and William Urquhart, liquidator of Aldecoa & Co., all of Manila:

You are hereby required to enter your appearance in the Office of the Clerk of the Court of First Instance of the City of Manila within twenty (20) days after the service of this summons upon you, exclusive of the day of such service if it is served on you in the city of Manila, otherwise within forty (40) days, and to answer the complaint of said plaintiff which is hereto attached and herewith served upon you, within the time fixed by the rules of this Court. If you fail to appear within the time aforesaid the plaintiff will take judgment against you by default and demand from said Court the relief applied for in said complaint.

Witness the Honorable A. S. Crossfield, Judge of this Court of First Instance this 31 day of March, 1911.

(Sgd.)

J. McMICKING,
*Clerk of the Court of First
Instance of the City of Manila.*

Sheriff's Return.

The Government of the Philippine Islands,
Office of the Sheriff,
Manila.

On this date I have served a copy of the within summons and of the complaint and the exhibits attached to said complaint upon Mr. Wm. Urquhart, Mr. Joaquín Ibañez de Aldecoa and Mr. Alexander S. Macleod; to each personally, upon Aldecoa & Co. in liquidation having left the documents in the hands of Mr. Wm. Urquhart as liquidator of said company; upon Da. Isabel Palet Vda. de Aldecoa and Don Zoilo Ibañez de Aldecoa having left the documents for each one of them, in the hands of Mr. Jose Ma. Ibañez de Aldecoa, as Attorney in fact of the same, who stated that he will exhibit his letters of attorney in case it is deemed necessary. This service has been made under the direction of Attorney for plaintiff. Done in Manila, this 1st day of April, 1911.

J. McMICKING,
Sheriff ex-Officio of Manila,
By JOSE SANCHEZ,
Deputy Sheriff.

(Sgd.)

(Title of the Case Omitted.)

To the Clerk of the Court of First Instance,

Sir: Please enter my appearance in the above entitled case on behalf of defendant Mr. Alexander S. Macleod for the legal effects thereof.

Manila, April 21, 1911.

(Sgd.)

RAMON SALINAS.

Stamped: Filed on the 21st of April, 1911, at 9:05 a. m. (Signed)
J. McMicking, Clerk.

(Title of the Case Omitted.)

97 The Clerk shall enter our appearance in the above entitled case as attorneys for the defendants Aldecoa & Co. in liquidation.

Manila, April 21st, 1911.

(Signed)

SANZ & OPISSO.

Stamped: Filed on the 21st of April at 11:10 a. m. (Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

The Clerk shall enter our appearance in the above entitled case on behalf of Mr. Zoilo Ibañez de Aldecoa, one of the defendants in the above entitled case.

Manila, April 20, 1911.

(Signed)

CHICOTE & MIRANDA,

Attorneys for Defendant Zoilo Ibañez de Aldecoa.

Received copy this — day of April, 1911.

HAUSSERMANN, COHN & FISHER,

(Sgd.) p. p. CLAUDIO R. DE LUZURIAGA,

Attorneys for the Plaintiff.

Stamped: Filed April 21, 1911, at 11:40 a. m. (Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

98 The Clerk shall enter my appearance in the above entitled case for myself and as liquidator of Aldecoa & Co. in Liquidation, defendants in said case.

Manila, April 20, 1911.

For Aldecoa & Company in Liquidation,

(Sgd.)

WM. URQUHART,

For Himself and as Liquidator of Aldecoa & Co., in Liquidation.

Received copy this — day of April, 1911.

HAUSSERMANN, COHN & FISHER,

(Sgd.) p. p. CLAUDIO R. DE LUZURIAGA,

Attorneys for the Plaintiff.

Stamped: Filed April 21, 1911, at 11:40 a. m.—(Sgd.) J. McMicking, Cler-.

(Title of the Case Omitted.)

The Clerk shall enter our appearance in the above entitled case on behalf of Isabel Palet y Gabarro, one of the defendants in the above entitled case.

Manila, April 20, 1911.

(Sgd.)

CHICOTE & MIRANDA,
Attorneys for Defendant
Isabel Palet y Gabarro.

Received copy this — day of April, 1911.

HAUSSERMANN, COHN & FISHER,
(Sgd.) p. p. CLAUDIO R. DE LUZURIAGA,
Attorneys for the Plaintiff.

Stamped: Filed April 21, 1911, at 11:40 a. m.—(Sgd.) J. McMicking, Clerk.

99

(Title of the Case Omitted.)

The Clerk shall enter our appearance in the above entitled case on behalf of Mr. Joaquin Ibañez de Aldecoa, one of the defendants in the above entitled case.

Manila, April 20, 1911.

(Sgd.)

CHICOTE & MIRANDA,
Attorneys for Defendant
Joaquin Ibañez de Aldecoa.

Received copy this -- day of April, 1911.

HAUSSERMANN, COHN & FISHER,
(Sgd.) p. p. CLAUDIO R. DE LUZURIAGA,
Attorneys for the Plaintiff.

Stamped: Filed April 21, 1911, at 11:40 a. m.—(Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

Now comes defendant Joaquin Ibañez de Aldecoa, by his undersigned attorneys and files a demurrer against the complaint based in the following motives:

1. That the complaint is *an* unintel-gible and vague.
2. That the said complaint does not allege facts sufficient to constitute a cause of action against this defendant.

Manila, May 2, 1911.

(Sgd.)

CHICOTE & MIRANDA,
Attorneys for Defendant
Joaquin Ibañez de Aldecoa.

Received copy this 3rd day of May, 1911.

HAUSSERMANN, COHN & FISHER,
(Sgd.) p. p. C. C. COHN,
Attorneys for Plaintiff.

100 Stamped: Filed this 3rd. day of May, 1911, at 9:00 a.
m.—(Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

Now comes defendant Zoilo Ibañez de Aldecoa, by his under-
signed attorneys and files a demurrer against the complaint based
in the following motives:

1. That the complaint is unintel-igible and vague.
2. That the said complaint does not allege facts sufficient to
constitute a cause of action against this defendant.

Manila, May 2, 1911.

(Sgd.) CHICOTE & MIRANDA,
Attorneys for Defendant
Zoilo Ibañez de Aldecoa.

Received copy this 3rd day of May, 1911.

HAUSSERMANN, COHN & FISHER,
(Sgd.) p. p. C. C. COHN,
Attorneys for Plaintiff.

(Title of the Case Omitted.)

Now comes defendant William Urquhart, by himself and as
liquidator of Aldecoa & Co. in Liquidation, and files a demurrer
against the complaint based in the following motives:

- 101 1. That the complaint is unintel-igible and vague.
2. That the said complaint does not allege facts sufficient
to constitute a cause of action against this defendant.

Manila, May 2, 1915.

(Sgd.) WM. URQUHART,
For Himself and as Liquidator
of Aldecoa & Co., in Liquidation.

Received copy this 3rd day of May, 1911.

HAUSSERMANN, COHN & FISHER,
(Sgd.) p. p. C. C. COHN,
Attorneys for Plaintiff.

(Title of the Case Omitted.)

Now comes defendant Doña Isabel Palet y Gabarro, by her under-
signed attorneys and files a demurrer against the complaint based
in the following motives:

1. That the complaint is unintel-igible and vague.

2. That the said complaint does not allege facts sufficient to constitute a cause of action against this defendant.

Manila, May 2, 1911.

(Sgd.)

CHICOTE & MIRANDA,

Attorneys for Defendant

Isabel Palet y Gabarro.

Received copy this 3rd day of May, 1911.

HAUSSERMANN, COHN & FISHER,

(Sgd.) p. p. C. C. COHN,

Attorneys for Plaintiff.

102

(Title of the Case Omitted.)

The defendant Alexander S. Macleod through the undersigned attorney, in answer to the complaint, alleges:

1. That he denies in general each and every one of the facts alleged in the complaint.

2. That he also denies the authenticity of all the documents attached to the complaint.

3. That as special defense he states in addition:

That by virtue of the document ratified and signed before the Notary Public of this City, Mr. Antonio Sanz, on August 14, 1907, Messrs. Jesus Jose Ma. Ibañez de Aldecoa y Abaroa on behalf of Doña Isabel Palet y Gabarro and of Don Zoilo Ibañez de Aldecoa, and Don Joaquín Ibañez de Aldecoa, by common agreement released this defendant Alexander S. Macleod from all liability in regard to third persons except Aldecoa & Co. for all the dealings and transactions which said third persons may have or may have had with said company thus putting completely at an end the relation of this defendant Alexander S. Macleod with the firm of Aldecoa & Co. as well as his relation with the creditors of said firm.

4. That by virtue thereof, the undersigned asks this Court to dismiss the complaint as to the defendant Alexander S. Macleod with costs against the plaintiff, granting also to said defendant whatever other remedy he may be entitled to in law.

Manila, May 2, 1911.

103 (Sgd.)

RAMON SALINAS,

311 Cabildo.

Received copy.

HAUSSERMANN, COHN & FISHER.

Stamped: Filed on the 3rd day of May, 1911, at 9:10 a. m.
(Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

The defendant Aldecoa & Co. in Liquidation and Wm. Urquhart file a demurrer to the complaint on the ground:

1. That there is defect or confusion of parties defendant.

2. That the complaint is ambiguous and unintelligible and vague.

Manila, May 2, 1911.

(Sgd.)

SANZ & OPISSO,

Attorneys, Plaza del P. Moraga, Manila.

Received copy.

HAUSERMANN, COHN & FISHER.

(Sgd.) p. p. CHARLES C. COHN.

Stamped: Filed this 3rd day of May, 1911, at 10:30 a. m.—
(Sgd.) J. McMicking, Clerk.

104

(Title of the Case Omitted.)

Messrs. Sanz & Opisso, Attorneys for Aldecoa & Co. in Liquidation;
Messrs. Chicote & Miranda, Attorneys for Joaquín Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Doña Isabel Palet y Gabarro;
Mr. William Urquhart, for himself and as Liquidator for Aldecoa & Co. in Liquidation, Greeting:

You and each of you are hereby notified that on Saturday, May 6, 1911, at 8 a. m. or as soon as thereafter as counsel may be heard, plaintiff, through the undersigned Attorneys, shall ask this Honorable Court to overrule the demurrer filed by you to the complaint in this case.

Manila, P. I., May 3, 1911.

HAUSERMANN, COHN & FISHER.

(Sgd.) p. p. CHARLES C. COHN.

Received copy this — day of May, 1911.

CHICOTE & MIRANDA,

(Sgd.)

By TIRSO DE IRURETA GOYENA.

(Sgd.)

WM. URQUHART.

SANZ & OPISSO,

(Sgd.)

By P. V. BERNABÉ.

Stamped: Filed on the 4th of May, 1911, at 9:20 a. m. (Sgd.)
J. McMicking, Clerk.

105

(Title of the Case Omitted.)

Order.

This case is before the Court for the hearing of the demurrer filed to the complaint by defendants William Urquhart, Joaquín Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, Isabel Palet y Gabarro and Aldecoa & Co.

Mr. C. C. Cohn appeared on behalf of plaintiff; Mr. Chicote on behalf of defendants Isabel Palet y Gabarro, Joaquín Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa; Mr. Sanz, appeared on behalf of Aldecoa & Co., no one appearing for defendant William Urquhart.

The demurrer of the defendant Aldecoa & Co. is based on the ground that there is defect or confusion of parties defendant and that the complaint is unintelligible and vague.

Plaintiff then withdrew the name of William Urquhart as Liquidator of Aldecoa & Co. and the complaint being thus amended, there is no more any confusion of parties as alleged.

The complaint is for the recovery of money by plaintiff against defendants and in case the judgment rendered against said defendants could not be satisfied, then it is asked that certain property described in the complaint and given in mortgage as security for the payment of the amount claimed, be sold to satisfy said judgment.

The Court is of the opinion that the complaint is sufficiently clear to advise the defendants of what is sought to be recovered from them.

The demurrer of each one of the other defendants is based on the ground that the complaint is unintelligible and vague and that the facts alleged are not sufficient to constitute a right of action.

The main vagueness alleged by counsel of these defendants, is that it is alleged that some defendants are debtors and at the same time the sale of certain property mortgaged by other people who has executed said mortgage to secure the payment of the debt, is prayed for, and there is also vagueness as to what plaintiff seeks to recover by its complaint.

As it appears in the face of the complaint, defendant Aldecoa & Co. is indebted to plaintiff; and other defendants secured the payment of the debt and mortgaged certain property as security for said payment.

The Court finds that the complaint is clear enough, as stated before, to advise defendants of what is sought to be recovered from them, that is to say, a judgment of the Court for a sum of money owed, against the persons who owe the same and, in case of failure to pay said amount, that the property given as security therefor by some of the defendants, be sold in satisfaction of the judgment.

The complaint alleges facts sufficient to constitute a cause of action.

107 It is therefore ordered that each and every one of the demurrers to the complaint be and are hereby overruled.

Manila, P. I., May 6, 1911.

(Signed)

A. S. CROSSFIELD, *Judge*.

This 8th day of May, 1911, the parties were notified of the foregoing order.

(Signed)

F. CANILLAS,
Deputy Clerk.

On May 9, 1911, defendant Aldecoa & Co. in Liquidation and William Urquhart filed their exception to the order of the Court overruling their demurrer.

On May 9, 1911, Attorneys for plaintiff notified the parties of the order of the Court overruling the demurrer.

On the 11th day of May, 1911, defendants Joaquin Ibañez de Al-

decoa, Zoilo Ibañez de Aldecoa and Isabel Palet y Gabarro Widow of Aldecoa, filed their exception to the above order.

On May 19, 1911, the defendants were given five days to answer to the complaint.

108

(Title of the Case Omitted.)

Answer of the Defendant Isabel Palet.

The defendant Isabel Palet, for herself and not on behalf of the other defendants, answering the complaint states:

That with the exception of paragraphs 1, 2 and 4, which are hereby admitted, denies generally and specifically all the other paragraphs of the complaint as to each and every one of the facts in the allegations contained therein.

And as special defense this defendant alleges:

I.

That under and by virtue of document Exhibit "A" of the complaint quoted at paragraph 3 of the same, this defendant, through her attorney, guaranteed the compliance by Aldecoa & Co. of the obligations which said firm has contracted by virtue of the same instrument in favor of the Hongkong & Shanghai Banking Corporation, which obligations consisted in that Aldecoa & Co. should pay plaintiff Banking Corporation the sum of fifty thousand pesos (P50,000) per year from the year 1906, in part payment of a certain debt which Aldecoa & Co. acknowledged to owe to plaintiff, so that on January 1, 1911, the credit of the plaintiff should not exceed the sum of two hundred and twenty-five thousand pesos (\$225,000) Philippine currency.

109 It was a special condition for the security given by this defendant, and it was so stipulated with the creditor Banking Corporation that this corporation should receive from the debtor company annually the fifty thousand pesos (P50,000) Philippine currency, in which the annual instalment for the part payment of the debt had been fixed: that as immediate security for the payment of these instalments and as liable in the first place there were certain shares which the debtor company owned in the capital stock of the "Compañi Marítima" and the "Banco Español-Filipino," which shares of stock had been delivered in pledge to the director of the creditor Banking Corporation; and that only at the end of the five years agreed upon for the reduction of the debt in the manner stated, the creditor bank could ask for the sale of the mortgaged property to pay itself with the proceeds of that sale the total amount of the debt of the firm of Aldecoa & Co., as it all appears expressly stated in the above said instrument Exhibit "A" of the complaint which this defendant now makes part of this her answer marked exhibit "I."

II.

Under and by virtue of said contract, the appearance in and execution of said instrument by this defendant through her attorney in fact, have had for a sole object to execute, as in fact this defendant did execute, a mortgage on certain real property belonging to her to answer subsidiarily for the balance which Aldecoa & Co. might owe to the plaintiff Banking Corporation on January 1st, 1911, after said creditor corporation should have exhausted all legal means within its reach to recover out of the property of the defendant Aldecoa & Co. the annual instalments agreed upon in the said contract.

III.

Plaintiff corporation, failing to comply with, and breaking the special condition for the security given by this defendant as stated in paragraph I of this special defense, not only failed to proceed against the debtor Company in due time to demand, obligate and receive from said company the annual instalments agreed upon, but through pacts, stipulations, conventions, compromises and arrangements made later with its principal debtor, Aldecoa & Co., consented to leave in full and even to increase sometimes the original amount of its credit during the years following the 1st of January, 1906, and consented not to apply in payment of the agreed instalments property of Aldecoa & Co. which came to its possession under such agreements according to which said property was only admitted and accepted by plaintiff corporation as new and additional guaranties instead of applying them pro tanto to its credit.

IV.

In her capacity and character as mortgagor and guarantor with which she appears in the execution of document Exhibit "A" of the complaint, this defendant furthermore alleges, that if it had not been for the acts and agreement referred to in the preceding paragraph, the credit of plaintiff corporation would have been totally paid on January 1, 1911, or at least reduced to an amount comparatively insignificant and that, therefore, the liability of this defendant as guarantor would have been at this date totally canceled or very much reduced.

V.

Defendant alleges furthermore that the agreements and compromises referred to in paragraph 3 of this her special defense, were done and executed without the consent and knowledge of this defendant; such conventions are a real novation, and, in fact, they have novated the essential conditions of the main obligation of the guarantee given by this defendant; that, therefore, the obligation of this defendant has been practically extinguished.

Wherefore, this defendant asks the Court to render judgment adjudging that the plaintiff corporation has no right to foreclose on the property of this defendant for payment of her alleged credit and, therefore that the complaint be dismissed as to this defendant with judgment in her favor for the costs of this action.

Manila, May 24, 1911.

(Sgd.)

CHICOTE & MIRANDA,

Attorneys for the Defendant Isabel Palet.

Received copy.

C. C. COHN,

Attorney for the Hongkong & Shanghai Banking Corporation.

112 Stamped: Filed on the 25th of May, 1911, at 9:15 a. m.
(Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

Answer of the Defendant Joaquín Ibañez de Aldecoa.

Joaquín Ibañez de Aldecoa, one of the defendants in the above entitled Civil case, answering the complaint, states:

That he denies generally and specifically each and every one of the facts alleged in each and every one of the paragraphs of the complaint, with the exception of those which are expressly admitted in the present answer.

As special defense this defendant alleges:

1. That he admits paragraph I of the complaint.

2. That he admits the allegation made in clause 3 of paragraph II of the complaint as to the fact that this defendant appeared in the Articles of Partnership of the firm of Aldecoa & Co. and in the Mercantile Registry, as industrial partner of said firm of Aldecoa & Co.; but he alleges that his appearance in and execution of said contract of Partnership, were made and executed without this defendant having any legal capacity to do so; and that by virtue of an action filed by this defendant to have said Contract of Partnership and inscription in the Mercantile Registry declared null and void as regards this defendant, said contract of partnership and in-

113 scription in the Mercantile Registry have been declared null and void and of no effect and value from their origin in Civil case No. 6088 of the Court of First Instance of Manila, by a final judgment dated September 5, 1908, already executed, copy of which is made part of this answer marked "1."

3. The defendant admits the fact that he executed the mortgage deed referred to in paragraph III of the complaint; but he alleges that his appearance in and execution of the said contract, has been made and done without this defendant having any legal capacity therefor; and that the nullity and inefficacy of said contract, as regards this defendant, have been judicially declared and are the subject matter of an action which was brought and prosecuted before

the Court of First Instance of Manila and is pending to-day on appeal before the Supreme Court of the Philippine Islands, in which this defendant is plaintiff and the Hongkong & Shanghai Banking Corporation is defendant. Should the final decision of the Court of last resort, be to the effect that said contract as regards this defendant, is null and void and of no effect, said decision shall be vital to the present case and shall totally deprive the plaintiff from any right to foreclose that mortgage. Wherefore, this defendant now pleads the *litis pendentia* between plaintiff and defendant on the subject matter of this suit, to wit: the foreclosure of the mortgage executed by virtue of the contract which appears in the instrument marked Exhibit "A" of the complaint.

As a further, different and separate special defense, without prejudice to the first special defense, and for the sole case that the former defense should not be deemed tenable, or in defect thereof, this defendant alleges:

1. That he admits paragraph first of the complaint.
2. That he reproduces herein the allegations made in paragraph II of the foregoing special defense.
3. The appearance in and execution by this defendant of contract Exhibit "A" of the complaint, were made and done exclusively for the purpose of executing a special mortgage on their interests in the real property described in paragraphs *a, b, c, d, and e*, of said contract Exhibit "A" of the complaint, and to guarantee the compliance with all the obligations which the firm of Aldecoa & Co. have by virtue of said contract, contracted in favor of the Hongkong & Shanghai Banking Corporation; and by virtue of said contract, it was a special condition of the mortgage thus executed and agreed upon between the guarantor and the creditor, that the latter should receive annually from the principal debtor, Aldecoa & Company, the sum of fifty thousand pesos (P50,000) Philippine currency, so as to reduce gradually, from the year 1906 till the year 1910 both inclusive, the debt of the principal debtor, to secure which payments and immediately liable therefor, there were, in the first place, certain shares of stock which the firm Aldecoa & Company owned in the Compañía Marítima and the Banco Español-Filipino, said shares having been pledged by virtue of said contract and placed into the hands of the Director of the creditor Banking Corporation; and that said corporation could only ask for the sale of the property or of the interest of this defendant in the property mortgaged, to recover the total sum of what Aldecoa & Company might owe to said Banking Corporation on January 1, 1911.

4. The defendant alleges that the plaintiff Banking Corporation, not only has failed to comply with the conditions mentioned in the preceding paragraph, to wit: that of collecting annually from Aldecoa & Co. the yearly installment agreed upon for the reduction of the principal of the debt, but that through pacts, stipulations, compromises and arrangements made later with the representatives of Aldecoa & Company and with the debtors of this firm, voluntarily and spontaneously consented to leave in full and even to increase sometimes the original amount of each credit during the five years above

mentioned, and not to apply to the agreed reductions of said credit property of Aldecoa & Company which came to its possession, which property, by virtue of said agreements and compromises had by and between said Aldecoa & Company and its debtors, was taken by the Bank as additional security for the original debt; all of which was done and executed without the knowledge or consent of the parties to said contract Exhibit "A" who appear therein as parties giving mortgage security in favor of the plaintiff Banking Corporation.

116 5. The agreements, stipulations, and compromises, referred to in the preceding paragraph, novating, as they do, an essential condition of the original contract Exhibit "A" of the complaint, have virtually extinguished the security which this defendant seems to have given by virtue of said original contract, to the plaintiff, and therefore, plaintiff has no action to foreclose on this defendant by reason of the original contract Exhibit "A" of the complaint above referred to.

Wherefore, this defendant asks that plaintiff shall take nothing by his complaint against this defendant and that said plaintiff be sentenced to pay the costs of this action.

Manila, May 24, 1911.

(Sgd.)

CHICOTE & MIRANDA,

Attorneys for the Defendant Joaquín Ibañez de Aldecoa.

Received copy:

HAUSSFERMANN, COHN & FISHER,

(Sgd.) p. p. C. C. COHN.

Stamped: Filed this 25th day of May, 1911, at 9:15 a. m. (Sgd.) J. McMicking, Clerk.

117

(Title of the Case Omitted.)

Answer of the Defendant Zoilo Ibañez de Aldecoa.

Zoilo Ibañez de Aldecoa, one of the defendants in the above entitled Civil case, answering the complaint, states:

That he denies generally and specifically each and every one of the facts alleged in each and every one of the paragraphs of the complaint, with the exception of those which are expressly admitted in the present answer.

As a special defense this defendant alleges:

1. That he admits paragraph I of the complaint.

2. That he admits the allegation made in clause 3 of paragraph II of the complaint as to the fact that this defendant appeared in the Articles of Partnership of the firm of Aldecoa & Company and in the Mercantile Registry as industrial partner of said firm of Aldecoa & Company; but he alleges that his appearance in and execution of said Contract of Partnership, were made and executed without this defendant having any legal capacity to do so; and that by virtue of an action filed by this defendant to have said Contract of Partnership

and inscription in the Mercantile Registry declared null and void as regards this defendant, said Contract of Partnership and inscription in the Mercantile Registry have been declared null and void and of no effect and value from their origin in Civil case No. 6088 of the Court of First Instance of Manila, by a final judgment dated September 5, 1908, already executed, copy of which is made part of this answer marked Exhibit "1."

3. This defendant admits the fact that he executed the mortgage deed referred to in paragraph III of the complaint, but he alleges that his appearance in and execution of said contract, has been made and done without this defendant having any legal capacity therefor and that the nullity and inefficacy of said contract, as regards this defendant, have been judicially declared and are the subject matter of an action which was brought and prosecuted before the Court of First Instance of Manila and is pending today on appeal before the Supreme Court of the Philippine Islands, in which this defendant is plaintiff and the Hongkong & Shanghai Banking Corporation is defendant. Should the final decision of the Court of last resort, be to the effect that said contract, as regards this defendant, is null and void and of no effect, said decision shall be vital to the present case and shall totally deprive the plaintiff from any right to foreclose that mortgage. Wherefore, this defendant now pleads the *litis pendentia* between plaintiff and defendant on the subject matter of this suit, to wit the foreclosure of the mortgage executed by virtue of the contract which appears in the instrument marked Exhibit "A" of the complaint.

119 As a further, different and separate special defense, without prejudice to the first special defense, and for the sole case that the former defense should not be deemed tenable, or in default thereof, this defendant alleges:

1. That he admits paragraph I of the complaint.

2. That he reproduces herein the allegations made in paragraph II of the foregoing special defense.

3. The appearance in and execution by this defendant of contract Exhibit "A" of the complaint, were made and done exclusively for the purpose of executing a special mortgage on their interests in the real property described in paragraphs *a, b, c, d, and e*, of said contract Exhibit "A" of the complaint, and to guarantee the compliance with all the obligations which the firm of Aldecoa & Company had by virtue of said contract contracted in favor of the Hongkong & Shanghai Banking Corporation; and by virtue of said contract, it was a special condition of the mortgage thus executed and agreed upon between the guarantor and the creditor, that the latter should receive annually from the principal debtor Aldecoa & Company the sum of fifty thousand pesos (P50,000) Philippine currency, so as to reduce gradually, from the year 1906 till the year 1910, both inclusive, the debt of the principal debtor, to secure which payments and immediately liable therefor, there were in the first place

120 certain shares of stock which the firm of Aldecoa & Company owned in the Compañia Maritima and the Banco Español-Filipino, said shares having been pledged by virtue of said

contract and placed into the hands of the Director of the creditor Banking Corporation; and that said corporation could only ask for the sale of the property or of the interest of this defendant in the property mortgaged, to recover the total sum of what Aldecoa & Company might owe to said Banking Corporation, on January 1, 1911.

4. This defendant alleges that the plaintiff Banking Corporation, not only has failed to comply with the conditions mentioned in the preceding paragraph; to wit: that of collecting annually from Aldecoa & Company the yearly instalment agreed upon for the reduction of the principal of the debt, but that through facts, stipulations, compromises and arrangements made later, with the representatives of Aldecoa & Company and with the debtors of this firm, voluntarily and spontaneously consented to leave in full and even to increase sometimes the original amount of each credit during the five years above mentioned, and not to apply to the agreed reductions of said credit, property of Aldecoa & Company which came to its possession, which property, by virtue of said agreements and compromises had by and between said Aldecoa & Company and its debtors, was taken by the Bank as additional security for the original debt; all of which was done and executed without the knowledge or consent of the parties to said contract Exhibit "A" who appear therein as
 121 parties giving mortgage security in favor of the plaintiff Banking Corporation.

5. The agreements, stipulations, and compromises, referred to in the preceding paragraph, novating, as they do, an essential condition of the original contract Exhibit "A" of the complaint, have virtually extinguished the security which this defendant seems to have given by virtue of said original contract, to the plaintiff, and therefore, plaintiff has no action to foreclose on this defendant by reason of the original contract Exhibit "A" of the complaint above referred to.

Wherefore, this defendant asks that plaintiff shall take nothing by his complaint against this defendant and that said plaintiff be sentenced to pay the costs of this action.

Manila, May 24, 1911.

(Sgd.)

CHICOTE & MIRANDA,

Attorney for the Defendant Zoilo Ibañez de Aldecoa.

Received copy:

HAUSSERMANN, COHN &
FISHER,

Attorneys for Plaintiff.

(Sgd.) p. p. C. C. COHN,

Stamped: Filed this 25th of May, 1911, at 9:15 a. m. (Sgd.)
J. McMicking, Clerk.

122

(Title of the Case Omitted.)

The defendant Aldecoa & Company in Liquidation answering the complaint on account of its demurrer having been overruled, and

reiterating its exception against the order overruling said demurrer, alleges:

I.

It accepts paragraphs 1, 2, 3, 4, 5, and 6.

II.

It accepts paragraph 7 only in regard to the execution of Exhibit "G" attached to the complaint, but denies specifically that said Exhibit "G" be an enlargement of the mortgage.

III.

It accepts paragraphs 8 and 9 of said complaint.

IV.

It denies paragraphs 10 and 11 of said complaint.

As a special defense, the defendant Aldecoa & Company in Liquidation, states:

123

I.

That this defendant who now answers, has not mortgaged any real property of any kind so as to be included in a special action for foreclosure of a mortgage.

II.

That the Court of Manila has no jurisdiction over a large portion of the real property which is sought to be foreclosed by the complaint.

III.

That plaintiff received from this defendant, who now answers, the commission to collect which plaintiff attaches to its complaint marked Exhibit "G," and has made collections on such commission without accounting to this defendant, and still is making use of said commission and in fact has collected some amounts after the filing of the complaint in this case.

IV.

That plaintiff has appropriated to itself many of the credits mentioned in Exhibit "G" of its complaint without crediting them to Aldecoa & Company.

124

As a counter-claim and set-off defendant Aldecoa & Company in Liquidation alleges:

I.

That this defendant who answers, had some debtors in the provinces whose names are mentioned in Exhibit "G," which is attached to the complaint, which debtors were obliged, while they remained as such debtors of Aldecoa & Company, to consign to this firm the hemp which they would gather in the provinces for the sale of the same on commission by this defendant.

II.

That of these debtors, the one called S. Zubeldia, has executed several mortgages in favor of Aldecoa & Company, which mortgages became due and actionable before the debt of Aldecoa & Company which is claimed in the complaint now answered, became due and payable.

III.

That the plaintiff Bank, on making use of the commission to collect which was given to it by virtue of Exhibit "G" which is attached to the complaint, rendered the foreclosure of those mortgages of S. Zubeldia impossible, thus damaging this defendant who now answers, in the sum of one hundred twenty one thousand 125 seven hundred and nine pesos and thirty-three centavos (P121,709.33) secured by said mortgages.

IV.

That furthermore, the plaintiff Bank made, induced and obtained from debtors of Aldecoa & Company who were obliged to send hemp in consignment to their creditor, to cease doing so and to consign the same to other persons or entities, by reason of which, this defendant who now answers, has been damaged in the sum of one hundred fifty thousand pesos (P150,000).

As a cross-complaint, defendant Aldecoa & Company in Liquidation, alleges and states:

I.

That on January 30, 1902, this defendant, who now answers, gave plaintiff Bank a commission to collect which is to be found in Exhibit "G" attached to plaintiff's complaint.

II.

That plaintiff Bank accepted the commission and has made use of the same.

126

III.

That it has not rendered an account of said commission and has transgressed its powers to the prejudice of this firm.

Defendant Aldecoa and Company in liquidation, asks this Court:

(a) That this foreclosure brought against it be dismissed.

(b) That judgment be rendered in its favor and against plaintiff for the sum of two hundred seventy one thousand seven hundred nine pesos and fifty three centavos (P271,709.53), for damages suffered by this defendant.

(c) That judgment be rendered in its favor and against the plaintiff for an accounting on the commission to collect contained in Exhibit "G" of the complaint.

(d) Judgment for costs; and whatever other remedy this Court might deem just and equitable.

Defendant W. Urquhart, answering the complaint, states:

127

I.

That Aldecoa and Company in liquidation, having already been made a party defendant in this case, he fails to understand why *is he* included also as a party defendant.

. II.

That, as liquidator of Aldecoa and Company in liquidation, he renews and makes his own the foregoing answer, counterclaim and cross-complaint, and as a private gentleman he has no interest in the issues in this case, except that the Hongkong Bank, by collecting for itself the credits of Aldecoa, has thereby made it impossible for him to collect his salaries which must have preference over the credit of the Bank.

If this liquidator is a proper party defendant, then this defendant files the following counterclaim against the plaintiff:

I.

That this defendant, now answering, is the liquidator of Aldecoa and Company, and has been discharging his duties as such
128 since the 1st day of January, 1907.

II.

That the remuneration for his services as such liquidator has been fixed in the sum of five hundred pesos (P500.00) a month.

III.

That this defendant has not collected any of the salaries earned by and due to him, and in the balance of accounts made on December 31st, 1910, this defendant appeared as creditor for salaries unpaid in the sum of nine thousand ninety seven pesos and eight centavos (P9,097.08).

IV.

That, furthermore, the salaries earned by him during the months of January, February, March, April and May of the present year, amounting to two thousand five hundred pesos (P2,500) are still unpaid and due to him.

V.

That during the time he has been working as liquidator, and for which he claims compensation, the plaintiff Bank by virtue of the commission given to the same by Exhibit "G" of plaintiff's
129 complaint, has collected credits belonging to Aldecoa and Company amounting to about two hundred twenty eight thousand four hundred and four pesos and eleven centavos (P228,404.11) according to the best information and belief of this liquidator.

VI.

That the liquidation has no other resources with which to pay the salaries earned by this defendant and which have preference over the credit of the plaintiff.

Defendant William Urquhart, asks this Court that the complaint be dismissed as to him, and that judgment be rendered in his favor and against the plaintiff Bank, sentencing said Bank to pay to this liquidator, from the amounts collected on account of Aldecoa and Company, the sum of eleven thousand five hundred ninety seven pesos and twenty eight centavos, (P11,597.28), in payment of the salaries earned by this defendant plus the subsequent salaries from June 1st, next, until the date of the judgment, at the rate of Five Hundred pesos per month. This defendant also asks judgment for costs and whatever other remedy this Court may deem just and equitable.

Manila, May 25, 1911.

130 (Signed)

ANTONIO SANZ,
Attorney at Law,
Plaza del P. Moraga, Manila.

Received copy this 25 of May, 1911.

HAUSSERMANN, COHN AND FISHER,
(Signed) p. p. CHARLES C. COHN.

Stamped: Filed on the 25 day of May, 1911, at 9:15 a. m.
(Signed) J. McMicking, Clerk.

(Title of the Case Omitted.)

To Mr. William Urquhart or his attorney, Don Antonio Sanz, Greeting:

You are hereby notified that on Saturday, June 3, 1911, at 8 a. m. or as soon thereafter as counsel may be heard, plain-

tiff corporation in the above entitled case shall ask the Court to order that the answer and counterclaim filed by defendant William Urquhart be stricken out from the record, on the ground that said Mr. Urquhart has been eliminated from this action by the order of this Court heretofore issued declaring that his inclusion as a party defendant in this case was erroneous.

Manila, P. I., May 31, 1911.

HAUSSERMANN, COHN AND FISHER,
(Signed) p. p. F. C. FISHER,
Attorneys for Plaintiff Corporation.

131 Received copy this 31 of May, 1911.

(Signed) A. SANZ.

Stamped: Filed on the 1 of June, 1911, at 9:10 a. m.—(Signed)
J. McMicking, Clerk.

(Title of the Case Omitted.)

To the defendant Aldecoa & Company, in Liquidation; Mr. William Urquhart, and their Attorney, Don Antonio Sanz, Greeting:

You are hereby notified that on Saturday, June 3, 1911, at eight a. m. or as soon thereafter as counsel can be heard, the plaintiff corporation in the above entitled case shall ask this Court to sustain the demurrers filed against the counterclaim and cross-complaint filed by you in answer to the complaint.

Manila, May 31, 1911.

HAUSSERMANN, COHN AND FISHER,
(Signed) p. p. F. C. FISHER,
Attorneys for Plaintiff Corporation.

Received copy, May 31, 1911.

Stamped: Filed on the 1 of June, 1911, at 9:10 a. m.—(Signed)
J. McMicking, Clerk.

132 (Title of the Case Omitted.)

Plaintiff Corporation hereby, and without prejudice to its motion asking that it be stricken out, files a demurrer against the answer and counterclaim filed by William Urquhart on the ground that the facts alleged in said answer and counterclaim do not constitute a defense or a motive for counterclaim and that the same are ambiguous and unintelligible and uncertain.

Manila, P. I., May 31, 1911.

HAUSSERMANN, COHN AND FISHER,
(Signed) p. p. F. C. FISHER.

Received copy, May 31, 1911.

(Signed) A. SANZ.

Stamped: Filed on the 1 of June, 1911, at 9:10 a. m.—(Signed)
J. McMicking, Clerk.

(Title of the Case Omitted.)

Plaintiff Corporation in the above entitled case files a demurrer against the special defense and counterclaim of the firm of Aldecoa & Company made part of its answer in this case, because the same does not allege facts sufficient to constitute a special defense or a counterclaim, and that the same are ambiguous, unintelligible and uncertain. Plaintiff Corporation also files a demurrer against the cross-complaint of the defendant Aldecoa & Company made part of its answer in this case on the ground that the same does not allege facts sufficient to constitute a right of action against
133 plaintiff Corporation and that the same is ambiguous, unintelligible and uncertain.

Manila, P. I., May 31, 1911.

HAUSSERMANN, COHN AND FISHER,
(Signed) p. p. F. C. FISHER.

Received copy, May 31, 1911.

(Signed) A. SANZ.

Stamped: Filed on the 1 of June, 1911, at 9:10 a. m.—(Signed)
J. McMicking, Clerk.

(Title of the Case Omitted.)

Order.

This case is before the Court for the hearing of plaintiff's motion asking that the answer of defendant Urquhart be stricken out of the record.

It appears from the record that the complaint has already been dismissed as to the defendant William Urquhart, but notwithstanding, Mr. Sanz states that said defendant has answered to the complaint because he has not been informed as to its dismissal and states also that he has no objection to have the answer of this defendant stricken out from the record.

And the Court so orders.

Manila, P. I., June 5, 1911.

(Signed) A. S. CROSSFIELD, *Judge.*

134 This seventh of June, 1911, the parties were notified of the above order.

(Signed) F. CANILLAS,
Deputy Clerk.

(Title of the Case Omitted.)

Order.

This case is before the Court for the hearing of the demurrer filed against the counterclaim and cross-complaint of the defendant Aldecoa & Company.

Attorney Sanz appeared on behalf of Aldecoa & Company there being no other appearance on behalf of any other of the parties.

After considering the grounds of the demurrer and finding that there are no reasons to justify the same,

The demurrer is overruled.

Manila, P. I., June 5, 1911.

(Signed)

A. S. CROSSFIELD, *Judge.*

This seventh day of June, 1911, the parties were notified of the above order.

(Signed)

F. CANILLAS,
Deputy Clerk.

(Title of the Case Omitted.)

Plaintiff, through its attorneys, files its exception against the order of this Court dated June 5, 1911, overruling the demurrer filed by plaintiff against the counterclaim and cross-complaint of the defendant Aldecoa & Company in liquidation.

Manila, June 8, 1911.

HAUSSERMANN, COHN & FISHER,
(Signed) p. p. F. C. FISHER.

Received copy this 8 of June, 1911.

(Signed) ANTONIO SANZ,

*Attorney for Defendants Aldecoa &
Company, in Liquidation, and
William Urquhart.*

Stamped: Filed on the 8 of June, 1911, at 8:50 a. m.—(Signed)
J. McMicking, Clerk.

(Title of the Case Omitted.)

Now comes the plaintiff through its undersigned attorneys and in answer to the counter-claim and cross-complaint of defendant Aldecoa & Company in liquidation, states that it denies each and every one of the allegations contained in the same.

Manila, June 8, 1911.

HAUSSERMANN, COHN AND FISHER,
(Signed) p. p. F. C. FISHER.

Received copy this 8 of June, 1911.

(Signed) ANTONIO SANZ,
*Attorney for Defendants Aldecoa &
 Co., in Liquidation, and William
 Urquhart.*

136

(Title of the Case Omitted.)

Petition for Intervention.

Now come Zoilo Ibañez de Aldecoa, Joaquín Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, in the above entitled case and respectfully state to this Court:

1. That they have an interest contrary to that of plaintiff, the Hongkong & Shanghai Banking Corporation, and to that of the defendant, Aldecoa & Company in liquidation, in regard to the foreclosure of the mortgages referred to and described in the complaint in this case and in the application of the proceeds of said foreclosure to pay the credit sued for by the Hongkong & Shanghai Banking Corporation.

2. The petitioners' interest is that the proceeds of the foreclosure of said mortgages be applied to satisfy a judgment which petitioners have obtained against Aldecoa & Company in liquidation; this credit being preferential to that of the Bank.

3. The alleged interest of petitioners is shown in the statement of facts alleged as ground for the petition, which is attached hereto.

Wherefore petitioners ask leave of Court to intervene in this case as plaintiff against the Hongkong & Shanghai Banking Corporation and against Aldecoa & Company in liquidation, and that they be allowed to file in the above entitled case the attached complaint, requesting said Aldecoa & Company in liquidation and said Hongkong Bank to answer to the complaint of these intervenors and to prosecute this intervention in accordance with the law.

Manila, July 29, 1911.

CHICOTE AND MIRANDA,

(Signed) By TIRSO DE IRURETA GOYENA,
Attorneys for Petitioners.

To the Attorneys of Aldecoa & Company, in Liquidation, and of the Hongkong and Shanghai Banking Corporation.

GENTLEMEN: You are hereby notified that on August 1, 1911, at 8:00 a. m. we shall submit the above motion to the Court and we shall ask that the petition for intervention asked in the attached copy of the complaint be granted.

Manila, July 29, 1911.

CHICOTE AND MIRANDA,

(Signed) By TIRSO DE IRURETA GOYENA,
Attorneys for Petitioners.

Received copy this 31 of July, 1911.

(Signed) SANZ & OPISSO,

*Attorneys for Aldecoa and Company,
in Liquidation.*

(Signed) HAUSSELMANN, COHN & FISHER,

Attorneys for the Hongkong Bank.

Stamped: Filed on the 31st of July, 1911, at 3:30 p. m.--
(Signed) E. V. Filamor, Deputy-Clerk.

138

(Title of the Case Omitted.)

Intervenors' Complaint.

Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, with the leave of this Court intervene in the above entitled case and filing this complaint against the plaintiff the Hongkong and Shanghai Banking Corporation and against the defendant Aldecoa & Company in liquidation, allege that:

1. In the month of February, 1897, Isabel Palet y Gabarro widow of Aldecoa, mother of these intervenors, deposited in the firm of Aldecoa & Company the sum of P204,184.74 belonging to these intervenors under the agreement and with the understanding that said Isabel Palet could at any time dispose freely, on behalf of her children, of said fund, which was to be considered as a preferential credit; and that, in regard to said sum, Aldecoa & Company bound itself not to execute any document or contract any obligation which would have preference over said credit of P204,184.74, unless Doña Isabel Palet should personally and expressly consent thereto. On December 31, 1906, the firm of Aldecoa & Company, by reason of the expiration of its social term, entered into liquidation, and after said date, these intervenors filed a complaint against Aldecoa & Company in liquidation to recover from said firm the sum which had been deposited therein through their mother Isabel Palet; which action, after being duly prosecuted, was finally decided by the Court of

139 First Instance of the City of Manila finding and adjudging the amount and the character of the credit of plaintiffs therein, and sentencing the firm of Aldecoa & Company in liquidation to pay said credit, together with legal interest thereon. A copy of said judgment is attached to this complaint marked Exhibit "A" and the contents thereof are made a part of this complaint.

2. After said judgment became final, and execution having been issued thereon, demand was made upon Aldecoa & Company in liquidation, who having no funds with which to satisfy said judgment, levy was made by virtue of said execution on some property which was found in the possession of said firm, which was afterwards sold but failed to bring enough money to satisfy the full amount of the judgment. The writ of execution having been returned without having been satisfied in full, plaintiffs in that action filed supplementary proceedings for the execution of the judgment wherein it was shown that Aldecoa & Company was not personally in possession of any

other property than that which had been levied upon and sold, *not* has it now or had then any other property free from encumbrance and liable on execution for the satisfaction of said judgment.

3. The balance owed by Aldecoa & Company in liquidation on the judgment above referred to (Exhibit "A") is at present P149,492.77, together with the interest thereon, to which balance the intervenors have all the right, title and interest which they were declared to have by said judgment.

140 4. On February 23, 1906, the firm of Aldecoa & Company owned and was in possession of considerable property and credits belonging to the same, amounting to not less than P600,000.

5. On said date, February 23, 1906, the firm of Aldecoa & Company entered into a contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, this Corporation agreed to open in favor of that firm a credit in account current up to the sum of P475,000 subject to the terms and conditions established by said agreement; Aldecoa & Company securing said credit with all the hemp bought or received in consignment by said firm, and with the pledge of 16 shares of stock in the Banco Español-Filipino and of 450 shares of stock owned by said firm in the "Compañía Marítima," as it all appears from the instrument marked Exhibit "A" and attached to the complaint in the above entitled case, appearing in this record, to which Exhibit "A" special reference is made in this allegation.

6. On December 22, 1906, Aldecoa & Company entered into another contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, Aldecoa & Company executed a special voluntary mortgage in favor of said Banking Corporation on the right of mortgage which said firm had on certain real estate belonging to Don Salustiano Zubeldia, one of the debtors of said firm, as additional security, besides that given in the contract of Febru-

141 ary 23, 1906, already mentioned and referred to in the above paragraph of this complaint of the intervenors; as it all appears from the instrument marked Exhibit "C" of the complaint filed in the above entitled case; to which document special reference is made by this allegation.

7. On January 30, 1907, Aldecoa & Company in liquidation made a new contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, that firm, through its liquidator, Mr. William Urquhart, ceded to the Banking Corporation new and additional securities different from those already given by the above said contracts of February 23, and December 22, 1906; said new additional security consisting of several credits of the firm of Aldecoa & Company amounting in all to the sum of P538,976.80, as it all appears from document Exhibit "G" of the complaint filed as a part of the complaint in this case; to which document special reference is herein made, said document being also made a part of this, the intervenor's complaint.

8. On June 13, 1907, the firm of Aldecoa & Company in liquidation, through William Urquhart, its liquidator, entered into a new contract with the Hongkong & Shanghai Banking Corporation, by

virtue of which, at the request of said Banking Corporation, the firm of Aldecoa & Company enlarged the securities theretofore given by instruments of February 23, and December 22, 1906, and January 30, 1907, mortgaging the real right of mortgage which the
142 firm of Aldecoa & Company had on some real estate belonging to Andres Garchitorena y Medina, one of the debtors of Aldecoa & Company; as it all appears from Exhibit "E" of the complaint filed in the above entitled case to which special reference is herein made, said document being also made a part of this allegation.

9. On the same date, June 13, 1907, the firm of Aldecoa & Company in liquidation entered into a new contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, at the request of said Banking Corporation, said firm of Aldecoa & Company again enlarged the securities given by the contracts above referred to, of February 23 and December 22, 1906, January 30 and June 13, 1907, mortgaging the real right of mortgage which said firm of Aldecoa & Company had on certain real estate belonging to Don Liborio Tremoya, one of the debtors of Aldecoa & Company; as it all appears by document Exhibit "F" of the complaint filed in the above entitled case, to which special reference is herein made, said document being made part thereof.

10. On August 30, 1907, Aldecoa & Company in liquidation entered into a new contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, and enlarging again the security given theretofore, as stated in the preceeding paragraphs, pledged in favor of said Banking Corporation 322 shares of stock which the
143 firm of Aldecoa & Company had in the "Pasay Estate Co. Ltd."; as it all appears from the instrument marked Exhibit "D" of the complaint filed in the above entitled case, to which special reference is made herein, said document being made part hereof.

11. In consequence of each and every one of the acts and contracts referred to in the preceeding paragraphs, the firm of Aldecoa & Company became insolvent as to its creditors, plaintiffs herein, Joaquin I. de Aldecoa, Zoilo I. de Aldecoa and Cecilia I. de Aldecoa.

12. All the acts and contracts referred to in this complaint, by virtue of which, Aldecoa & Company contracted obligations in favor of the Hongkong & Shanghai Banking Corporation, pretending thereby to give them preference over the credit of *this* complainants, have been executed and entered into in manifest violation of the agreement executed by and between said firm of Aldecoa & Company and Isabel Puget, as mother of these plaintiffs, in the month of February of the year 1897, which credit is the same one for which judgment has been rendered in civil case No. 6087 of this Court, referred to and made part of paragraph I of this complaint; and said acts and contracts had been executed and entered into by Aldecoa & Company fraudulently and to the damage of its creditors, complainants herein.

13. Plaintiffs also allege that the contract entered into by and between Aldecoa & Company in liquidation and the Hongkong & Shanghai Banking Corporation, above referred to as Exhibits "G,"

144 "E," "F" and "D" of the complaint in the above entitled case, have been executed by Aldecoa & Company in liquidation without any authority or permission therefor, and have been executed by its liquidator William Urquhart without sufficient power, permission or authority to do so.

Plaintiffs also allege that the contract of August 30, 1907, referred to in paragraph 10 of this complaint, has been impeached by these plaintiffs as null and void and of no effect in an action filed by these plaintiffs against the parties made defendants in this complaint, and has been declared null and void by a judgment of this Court in civil case No. 7493; which judgment is now pending before the Supreme Court of the Philippine Islands by virtue of an appeal taken against the same by the Hongkong and Shanghai Banking Corporation. Plaintiffs make said judgment and the contents thereof, part of this allegation.

Wherefore, plaintiffs ask this Court to render judgment, finding, adjudging and decreeing:

(a) That the credit of these plaintiffs, adjudged in their favor by the judgment rendered in civil case No. 6087 of this Court, has preference over any other credit against Aldecoa & Company in liquidation and, consequently, over the alleged credit of the Hongkong and Shanghai Banking Corporation which is the subject of the complaint filed by said bank in the above entitled case.

(b) That the contracts executed by Aldecoa & Company, securing the credit of the Hongkong and Shanghai Banking Corporation, be hereby rescinded in favor of these plaintiffs as far as they
145 may oppose or prejudice the recovery of the credit of these plaintiffs in preference to any other.

(c) That the property of Aldecoa & Company, given as security by virtue of said contracts to the Hongkong and Shanghai Banking Corporation, be declared preferentially liable to the payment of the credit of these plaintiffs as far as the proceeds thereof may cover the unpaid balance of the credit of these plaintiffs; in other words, that the proceeds of said property sold at public auction be first applied to satisfy the credit of these plaintiffs for which judgment has been rendered in civil case No. 6087.

Manila, July 28, 1911.

(Signed)

CHICOTE AND MIRANDA,
Attorneys for the Intervenors.

Received copy this 31 of July, 1911.

(Sgd.) SANZ & OPISSO.

(Sgd.) HAUSSERMANN, COHN AND FISHER.

Stamped: Filed on the 31 of July, 1911, at 3:30 p. m. (Signed)
E. V. Filamor, Deputy Clerk.

(Title of the Case Omitted.)

Order.

A motion has been filed in this case, which was heard on the 5th of this month, asking that Zoilo Ibañez de Aldecoa, Joaquin Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa be allowed to intervene, as plaintiffs, against the Hongkong & Shanghai Banking Corporation and Aldecoa & Company in liquidation.

After a long debate by the attorneys of the parties in this case, they finally reached to an agreement in the sense that Cecilia Ibañez de Aldecoa, who heretofore has not been a party in this case, be allowed to intervene as plaintiff, and Messrs. Zoilo Ibañez de Aldecoa and Joaquin Ibañez de Aldecoa, being already defendants in this case, be given an opportunity to file their respective special defenses in this case.

It is therefore ordered that both said intervenor and the defendants, be given 10 days respectively to file their complaint and special defenses.

Manila, August 8, 1911.

(Signed)

S. DEL ROSARIO, *Judge.*

This 9th day of August, 1911, the parties were notified of the above order.

(Signed)

E. V. FILAMOR,
Deputy Clerk.

147 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Manila.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff,
vs.
ALDECOA & COMPANY, in Liquidation, et al., Defendants.

JOAQUIN IBAÑEZ DE ALDECOA, ZOILO IBAÑEZ DE ALDECOA, Cross-complainants, and CECILIA IBAÑEZ DE ALDECOA, Plaintiff, Intervenor.

vs.
THE HONGKONG & SHANGHAI BANKING CORPORATION, ALDECOA & COMPANY, in Liquidation, and WILLIAM URQUHART, Defendants.

Cross-complaint.

Now comes Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, made parties defendant in the above entitled case, and before this Court and with leave of the same, file this cross-complaint against the Hongkong and Shanghai Banking Corporation, William Urquhart and Aldecoa and Company in liquidation; and with them also comes Cecilia Ibañez de Aldecoa, who with leave of Court, inter-

venes as plaintiff in this case interested in the cross-complaint filed against the said Hongkong Banking Corporation, William Urquhart and Aldecoa & Company in liquidation by reason of the unity of interests and right of action between said intervenor
148 and said cross-complainants and as motive for this cause of action, allege:

1. In the month of February, 1897, Isabel Palet y Gabarro widow of Aldecoa, mother of these intervenors, deposited in the firm of Aldecoa & Company the sum of P204,184.74 belonging to these intervenors under the agreement and with the understanding that said Isabel Palet could at any time dispose freely, on behalf of her children, of said fund which was to be considered as a preferential credit; and that in regard to said sum Aldecoa & Company bound itself not to execute any document or contract any obligation which would have preference over said credit of P204,184.74, unless Doña Isabel Palet should personally and expressly consent thereto. On December 31, 1906, the firm of Aldecoa & Company, by reason of the expiration of its social term, entered into liquidation, and after said date, these intervenors filed a complaint against Aldecoa & Company in liquidation to recover from said firm the sum which had been deposited therein through their mother Isabel Palet; which action, after being duly prosecuted, was finally decided by the Court of First Instance of the City of Manila finding and adjudging the amount and the character of the credit of plaintiffs therein, and sentencing the firm of Aldecoa & Company in liquidation to pay said credit, together with legal interest thereupon. A copy of said judgment is attached to this complaint marked Exhibit "A" and the contents thereof are made a part of this complaint.

149 2. After said judgment became final, and execution having been issued thereon, demand was made upon Aldecoa & Company in liquidation, who having no funds with which to satisfy said judgment, levy was made by virtue of said execution on some property which was found in the possession of said firm, which was afterwards sold but failed to bring enough money to satisfy the full amount of the judgment. The writ of execution having been returned without having been satisfied in full, plaintiffs in that action filed supplementary proceedings for the execution of the judgment wherein it was shown that Aldecoa & Company was not personally in possession of any other property than that which had been levied upon and sold, nor has it now or had then any other property free from encumbrance and liable on execution for the satisfaction of said judgment.

3. The balance owed by Aldecoa & Company in liquidation on the judgment above referred to (Exhibit "A") is at present P149,492.77, together with the interest thereon, to which balance the intervenors have all the right, title and interest which they were declared to have by said judgment.

4. On February 23, 1906, the firm of Aldecoa & Company owned and was in possession of considerable property and credits belonging to the same, amounting to not less than P600,000.

150 5. On said date, February 23, 1906, the firm of Aldecoa &

Company entered into a contract with the Hongkong and Shanghai Banking Corporation, by virtue of which, this Corporation agreed to open in favor of that firm a credit in account current up to the sum of P475,000, subject to the terms and conditions established by said agreement, Aldecoa & Company securing said credit with all the hemp bought or received in consignment by said firm, and with the pledge of 16 shares of stock in the Banco Español-Filipino and of 450 shares of stock owned by said firm in the "Compañía Marítima," as it all appears from the instrument marked Exhibit "A" and attached to the complaint in the above entitled case, appearing in this record; to which Exhibit "A" special reference is made in this allegation.

6. On December 22, 1906, Aldecoa & Company entered into another contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, Aldecoa & Company executed a special voluntary mortgage in favor of said Banking Corporation on the right of mortgage which said firm had on certain real estate belonging to Don Salustiano Zubeldia, one of the debtors of said firm, as additional security besides that given in the contract of February 23, 1906, already mentioned and referred to in the above paragraph of this complaint of the intervenors; as it all appears from the instrument marked Exhibit "C" of the complaint filed in the above entitled case; to which document special reference is made by this allegation.

151 7. On January 30, 1907, Aldecoa & Company in liquidation made a new contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, that firm through its liquidator Mr. William Urquhart, ceded to the Banking Corporation new and additional securities different from those already given by the above said contracts of February 23, and December 22, 1906; said new additional security consisted of several credits of the firm of Aldecoa & Company amounting in all to the sum of P538,976.80, as it all appears from document Exhibit "G" of the complaint filed as a part of the complaint in this case; to which document special reference is herein made, said document being also made a part of this, the intervenors' complaint.

8. On June 13, 1907, the firm of Aldecoa & Company in liquidation, through William Urquhart, its liquidator, entered into a new contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, at the request of said Banking Corporation, the firm of Aldecoa & Company enlarged the securities theretofore given by instruments of February 23 and December 22, 1906, and January 30, 1907, mortgaging the real right of mortgage which the firm of Aldecoa & Company had on some real estate belonging to Andres Garchitorea y Medina, one of the debtors of Aldecoa & Company; as it all appears from Exhibit "E" of the complaint filed in the above entitled case to which document special reference is herein made said document being also made a part of this allegation.

152 9. On the same date, June 13, 1907, the firm of Aldecoa & Company in liquidation entered into a new contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, at the request of said Banking Corporation, said firm of Aldecoa &

Company again enlarged the securities given by the contracts above referred to, of February 23 and December 22, 1906, January 30 and June 13, 1907, mortgaging the real right of mortgage which said firm of Aldecoa & Company had on certain real estate belonging to Don Liborio Tremoya, one of the debtors of Aldecoa & Company; as it all appears by document Exhibit "F" of the complaint filed in the above entitled case, to which special reference is herein made, said document being made a part thereof.

10. On August 30, 1907, Aldecoa & Company in liquidation entered into a new contract with the Hongkong & Shanghai Banking Corporation, by virtue of which, and enlarging again the security given theretofore, as stated in the preceeding paragraphs, pledged in favor of said Banking Corporation 322 shares of stock which the firm of Aldecoa & Company had in the "Pasay Estate Co. Ltd.," as it all appears from the instrument marked Exhibit "D" of the complaint filed in the above entitled case, to which special reference is made herein, said document being made part hereof.

11. That by virtue and in consequence of each and every one of the contracts of security referred to in paragraphs V to X of this cross-complaint, the firm of Aldecoa & Company was found
153 in the following situation: (a) With all its property solely and exclusively mortgaged, as it is now, in favor of the Hongkong & Shanghai Bank; and (b) in a state of absolute insolvency in regard to her other creditors, the plaintiffs herein, whom, in spite of the privileged character of their credit, it has placed after the Bank for the collection of their credit.

12. These cross-complainants allege that the total value of all the property and rights of Aldecoa & Company ceded and transferred in favor of the Hongkong Bank both as original and additional securities, exceed greatly the real and true amount of the pretended credit of the said Banking Corporation; the more so, if the value of the private property of Doña Isabel Palet y Gabarro which was also given as security to the Bank according to contract Exhibit "A" of the complaint, is taken into account.

13. The cross-complainants allege also that on the date when the contracts for additional security were given by Aldecoa & Company in liquidation in favor of the Hongkong Bank, the credit of this Banking Corporation which by said contracts it was sought to secure, was not due or payable; but that on the other hand, on and before all those dates the privileged credit of these cross-complainants was due and payable in full.

14. The aforesaid contracts, mentioned in the preceeding paragraph of this cross-complaint, have been executed and entered into by and between Aldecoa & Company and the Hongkong
154 Bank with the deliberate purpose of making the latter a preferred and privileged creditor and to prejudice and defraud the other creditors of Aldecoa & Company, these cross-complainants.

15. The contracts entered into by Aldecoa & Company in liquidation through its liquidator William Urquhart, with the Manager of the Hongkong Bank, marked Exhibits "G," "E," "F" and "D" of the Bank's complaint, have been executed, furthermore, by Aldecoa

& Company without any authority or permission therefor, and have been executed by its liquidator, William Urquhart, without sufficient power, permission or authority to do so.

And they furthermore allege that the contract of August 30, 1907, mentioned in paragraph X of this cross-complaint, has been declared null and void by a judgment of this Court rendered in civil case No. 7493 and filed by these cross-complainants against the parties who are made defendants herein and which is now pending on appeal taken by the Hongkong and Shanghai Banking Corporation before the Supreme Court.

Wherefore these cross-complainants ask the Court to render judgment decreeing:

(a) That the credit of these plaintiffs, adjudged in their favor by the judgment rendered in civil case No. 6087 of this Court, has preference over any other credit against Aldecoa & Company in liquidation and, consequently, over the alleged credit of the Hongkong and Shanghai Banking Corporation, which is the subject of 155 the complaint filed by said bank in the above entitled case.

(b) That the contracts executed by Aldecoa & Company, securing the credit of the Hongkong and Shanghai Banking Corporation, be hereby rescinded in favor of these plaintiffs as far as they may oppose or prejudice the recovery of the credit of these plaintiffs in preference to any other.

(c) That the property of Aldecoa & Company, given as security by virtue of said contracts to the Hongkong and Shanghai Banking Corporation, be declared preferentially liable to the payment of the credit of these plaintiffs as far as the proceeds thereof may cover the unpaid balance of the credit of these plaintiffs; in other words, that the proceeds of said property sold at public auction be first applied to satisfy the credit of these plaintiffs for which judgment has been rendered in civil case No. 6087.

Manila, August 16, 1911.

(Signed)

CHICOTE AND MIRANDA,
Attorneys for the Cross-complainants.

Received copy this 17th of August, 1911.

(Signed) HAUSSELMANN, COHN & FISHER,
*Attorneys for the Hongkong and
Shanghai Banking Corporation.*

Stamped: Filed on the 17th of August, 1911, at 11:45 a. m.—
(Signed) E. V. Filamor, Deputy Clerk.

156 (Title of the Case Omitted.)

Now comes the plaintiff in the above entitled case, through its counsel, and in answer to the intervenor's complaint of Messrs. Zoilo and Joaquin and Doña Cecilia, surnamed Ibañez de Aldecoa, states

that it denies each and every one of the allegations contained in each one of the paragraphs of the said intervenor's complaint.

Manila, August 17, 1911.

HAUSSERMANN, COHN AND FISHER,
(Sgd.) p. p. JOHN W. HAUSSERMANN,
Attorneys for Plaintiff.

Received copy this 17th day of August, 1911.

(Signed) CHICOTE AND MIRANDA,
*Attorneys for Don Zoilo Ibañez de Aldecoa,
Don Joaquín Ibañez de Aldecoa, and
Cecilia Ibañez de Aldecoa.*

Stamped: Filed on the 17th of August, 1911, at 2:45 p. m.—
(Signed) J. McMicking, Clerk.

UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Manila.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff,
vs.
ALDECOA & COMPANY, in Liquidation, et al., Defendants.

JOAQUIN IBAÑEZ DE ALDECOA, ZOILO IBAÑEZ DE ALDECOA, Cross-complainants, and CECILIA IBAÑEZ DE ALDECOA, Plaintiff, Intervenor.
vs.

157 THE HONGKONG AND SHANGHAI BANKING CORPORATION, ALDECOA AND COMPANY, in Liquidation, and WILLIAM URQUHART, Defendants.

Now comes plaintiff, the Hongkong & Shanghai Banking Corporation, through its attorneys in the above entitled case, and answering the cross-complaint of cross-complainants, denies each and every one of the allegations contained in each and every one of the paragraphs of said cross-complaint.

Manila, August 21, 1911.

HAUSSERMANN, COHN AND FISHER,
(Sgd.) p. p. JOHN W. HAUSSERMANN,
*Attorneys for the Hongkong and
Shanghai Banking Corporation.*

Received copy this 21st of August, 1911.

(Sgd.) CHICOTE AND MIRANDA,
Attorneys for the Cross-complainants.

Stamped: Filed on the 22nd of August, 1911, at 8:40 a. m.
(Signed) J. McMicking, Clerk.

(Title of the Case Omitted.)

Petition for Intervention of William Urquhart.

Now comes William Urquhart and asks leave of this Court to intervene personally in the above entitled case in accordance with section 121 of the Code of Civil Procedure, in favor of the defendants Aldecoa & Company in liquidation, basing his petition in the following allegation:

As a first cause of action:

I.

That this intervenor is the liquidator of the defendant firm Aldecoa & Company in liquidation and the only person who has been managing and reserving the property belonging to said firm from December 31, 1906, to the benefit not only of said firm and its members but also of the creditors, amongst which is to be found the Hongkong and Shanghai Banking Corporation the plaintiff herein.

II.

That when the defendant firm Aldecoa & Company went into liquidation at the suggestion of, and induced by the plaintiff bank, it was agreed to proceed to such liquidation calmly and orderly so as to get the greatest possible benefit for the creditors and, mainly, the Hongkong and Shanghai Banking Corporation.

III.

That by virtue of the above suggestion, this intervenor went calmly and slowly and in accordance with the suggestion of the Hongkong and Shanghai Banking Corporation, liquidating the creditors of the defendant Aldecoa & Company in liquidation, and just as he has been collecting them he has invested them in the form suggested by the said bank, plaintiff herein, that is to say, he has been paying into the bank all the amounts collected from the debtors and giving the said bank commission to collect so as to decrease the balance of the debt which plaintiff claims in this action.

IV.

That for doing so this liquidator, the intervenor herein, has found himself without funds to pay his own compensation as liquidator in the hopes that continuing the liquidation in the form in which it began, that is to say, with the calm recommended suggested and even promised by said plaintiff bank, this liquidator could later on collect the just compensation for his services and besides his deposit of Twenty Thousand Nine Hundred Seventy-six pesos and Sixty-eight centavos (P20,976.68).

V.

That the filing of this action against the very recommendation, suggestions and promises of the plaintiff bank, places this liquidator in the danger of not having where to collect the amount which is due to him as liquidator for the custody, preservation and administration of the property of the firm in liquidation.

VI.

That this liquidator-intervenor has been assigned a compensation of five hundred pesos (P500.00) per month for his services as liquidator, which he has already collected up to and including the month of January, 1910, but there are three hundred sixty eight pesos ninety two centavos (P368.92) due him on account of his salary for the month of February, 1910, and the complete salary for the succeeding months, from March 1910 up to the present.

VII.

That the salary of this liquidator being, as it is, an expense of the administration, has preference over any other credit.

VIII.

That in case that the plaintiff bank should obtain judgment in its favor in this action the liquidation will be at an end without property to pay the salary of this liquidator.

As a second cause of action this intervenor alleges:

I.

That he is the liquidator of the defendant Aldecoa & Company in liquidation.

161

II.

That before the expiration of the social term of said firm, this liquidator had been working for said firm as an employee thereof, having left part of his salary deposited with said firm.

III.

That at the expiration of the social term of Aldecoa & Company, on December 31, 1906, this intervenor was a creditor of the Company for the reason above stated, and his credit amounts at present to the sum of Twenty Thousand Nine Hundred Seventy-six Pesos and Sixty-eight Centavos (P20,976.68).

IV.

That by the suggestion of the Hongkong & Shanghai Banking Corporation that the liquidation should proceed slowly in order to get the best out of the assets of Aldecoa & Company, and specially of many mortgage securities, this intervenor was induced to pay preferentially the debt of the Hongkong and Shanghai Banking Corporation in the hope that, continuing the liquidation, a sufficient amount could be secured to pay all the obligations of the firm pending liquidation amongst which was the credit of this intervenor to which this second cause of action refers.

V.

That the initiation of this action by the Hongkong and Shanghai Banking Corporation after said bank has recovered in the manner above stated a large part of its credit is a danger to the continuation of the liquidation and places this intervenor in the danger of not being able to recover his credits for his services.

This intervenor asks the Court that in case judgment should be rendered in favor of the plaintiff bank against the property of Aldecoa & Company in liquidation, it be ordered that the salaries of this intervenor be paid in preference to the credit of the plaintiff, to wit:

(a) Nine Thousand Eight Hundred Sixty-eight Pesos and Ninety-two Centavos (P9,868.92) for his salary as liquidator until the 30th of September, 1911, and his salary for the succeeding month at the rate of five hundred pesos a month from October first next until the date of payment out of the property of Aldecoa & Company which may be executed by the Hongkong and Shanghai Banking Corporation.

(b) Twenty Thousand Nine Hundred Seventy-six Pesos and Sixty-eight Centavos (P20,976.68) for his salaries as employee which were deposited with the firm when it went into liquidation. Judgment is also asked for the costs, legal interests and also any other remedy which the Court may deem just and equitable.

Manila, September 25, 1911.

163 (Signed)

SANZ & OPISSO,

Attorneys, Plaza del P. Moraga, Manila.

To the attorneys of the Hongkong and Shanghai Banking Corporation and of Doña Isabel Palet, Don Zoilo and Don Joaquín de Aldecoa:

Please take notice that the undersigned attorneys of Mr. William Urquhart shall ask the Court on Saturday the 30th. instant to admit the foregoing complaint of the intervenor.

Manila, September 25, 1911.

(Signed)

SANZ & OPISSO,

Attorneys, Plaza del P. Moraga, Manila.

Received copy and we consent that the motion be heard on Saturday 30th instant.

(Signed)

F. C. FISHER,
*Attorney of the Hongkong & Shanghai
Banking Corporation.*

(Signed)

CHICOTE AND MIRANDA,
*Attorneys for Doña Isabel Palet,
Don Zoilo, and Don Joaquin de Aldecoa.*

Stamped: Filed on the 29th of September, 1911, at 2:00 p. m.
(Signed) J. McMicking, Clerk.

(Title of the Case Omitted.)

Order.

The attorneys for the Hongkong and Shanghai Banking Corporation, of Isabel Palet and Zoilo and Joaquin Ibañez
164 de Aldecoa having been notified of the hearing of the motion of William Urquhart asking that he be allowed to intervene in this case in favor of the defense of Aldecoa & Company, set for to day, and none of said attorneys having appeared to oppose said motion

The motion is granted.

The plaintiff as well as the attorneys for Isabel, Zoilo and Joaquin Ibañez de Aldecoa are hereby granted ten days to answer the complaint filed by the intervenor William Urquhart.

Manila, September 30, 1911.

(Signed)

S. DEL ROSARIO, *Judge.*

This 3rd day of October, 1911, the parties were notified of the above decision.

(Signed)

E. V. FILAMOR,
Deputy-Clerk.

The attorneys for the Hongkong Bank after having excepted to the order of the Court allowing the intervention of William Urquhart, on the fifth day of October, 1911, filed the following answer to the complaint of the intervenor.

(Title of the Case Omitted.)

Now come the attorneys of the Hongkong and Shanghai Banking Corporation and in answer to the complaint filed by Mr.
165 William Urquhart, as intervenor, state that they deny each and every one of the allegations contained in the same.

Manila, October 4, 1911.

HAUSSERMANN, COHN AND FISHER,
(Sgd.) p. p. F. C. FISHER.

Received copy this 5th day of October, 1911.

(Sgd.)

CHICOTE AND MIRANDA,
Attorneys for Joaquin Zoilo Aldecoa et al.
SANZ & OPISSO.

(Sgd.)

Stamped: Filed on the 5th day of October, 1911, at 3:45 p. m.
(Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

Messrs. Haussermann, Cohn & Fisher, Attorneys for the Plaintiff;
Messrs. Chicote and Miranda, Attorneys for the Intervenor, Greeting:

You are hereby duly notified that the undersigned attorneys for the defendant concern shall take the deposition of the witness Martin Achaval, who is about to leave Manila for the provinces on the 19th of this month; without knowing when will he be able to return; this deposition shall be taken before the Clerk of the Court of First Instance of Manila, Mr. J. McMicking, on Thursday the 18th. instant, at 2:30 p. m. and use of the said deposition shall be made at the trial of this case. The depositions shall be taken by virtue of the above stated and of the affidavit of the undersigned Antonio Sanz, the whole being within the provisions of section 355 of the Code of Civil Procedure.

Manila, January 16, 1912.

(Signed)

ANTONIO SANZ,
Attorney at Law, Plaza del P. Moraga, Manila.

Copy received this 16th of January, 1912, at 6 o'clock p. m.

(Signed) HAUSSERMANN, COHN & FISHER.

(Signed) CHICOTE AND MIRANDA.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

Antonio Sanz, after being duly sworn, states:

That he is the Attorney of the defendant concern in the case entitled Hongkong and Shanghai Banking Corporation versus Aldecoa and Company, No. 8519.

That he is acquainted with the issues in this case and in order to prove some important facts alieged in the answer, cross-complaint and counter-claim, of the defendant concern, the testimony of Martin Achaval is absolutely necessary and cannot be omitted, he being the only witness competent to testify as to some facts therein stated.

That the said witness Martin Achaval is about to leave for the provinces on the 19th instant and will not be in Manila at the time his testimony shall be needed.

That this case is within the provisions of Section 355 of the Code of Civil Procedure.

(Signed)

ANTONIO SANZ.

Subscribed and sworn to before me this 16th of January, 1912, by

Don Antonio Sanz, who exhibited his certificate of cedula No. F-2542, issued in Manila on January 6, 1912.

[NOTARIAL SEAL.]

(Sgd.)

CLAUDIO R. DE LUZURIAGA,
Notary Public.

My commission expires on December 31, 1912.

(Reg. Not. No. 9 page 8.)

Stamped: Filed on the 17th of January, 1912, at 9:00 a. m.
(Sgd.) J. McMicking, Clerk.

168

(Title of the Case Omitted.)

Deposition of the Witness Martin Achaval.

Proceedings.

THURSDAY, January 18, 1912, p. m.

Before me, J. McMicking, Clerk of the Court of First Instance of the City of Manila, being 3:30 p. m., appeared: Mr. F. C. Fisher and Mr. J. W. Haussermann on behalf of plaintiff and Don Antonio Sanz on behalf of defendant and by mutual agreement said parties proceed to take the deposition of

MARTIN ACHAVAL, called as a witness and after being duly sworn, testified as follows:

Direct examination by Mr. Sanz:

Q. State your name, business and residence.

A. Martin Achaval, merchant, and agriculturer, Ligao, Albay.

Q. Are you about to leave the City of Manila?

A. Yes, sir, I desire to leave as soon as possible; but I shall probably leave by the steamer Magallanes.

Q. When does the Magallanes leave?

A. I have been told that on Monday or Tuesday. It is not settled yet.

169 Q. Are you sure to be here on the 22nd of this month?

A. No, I am not sure.

Q. Do you know the firm of Aldecoa & Company?

A. Yes, sir.

Q. Since when and why?

A. I have known it for a long time, but I have only dealt with them since the year 1900.

Q. Do you know the Hongkong and Sh-nghai Banking Corporation?

A. Yes, sir.

Q. Why do you know it,

A. Because toward the end of 1906, if I am not mistaken, they

sent me a telegram whereby we were told "your credit or debt with the firm of Aldecoa"—

Mr. Fisher: We object, because the witness is testifying in regard to a document and the document would be the best evidence.

Q. Proceed.

A. I know it from that time of that telegram, and then, later on, that is to say, shortly afterwards, my agent, I believe,—because I was then in Spain,—who was my brother Sebastian, came here to make some arrangements with the Hongkong Bank; this arrangement consisting in executing a mortgage deed of my property and that of my brother, binding myself to pay P22,000.00 which I then owed the firm of Aldecoa & Company, in three instalments.

170 Q. When did your business connections with Aldecoa & Company close?

A. From the moment that that document was executed, in consequence of the telegram and the other things that happened.

Q. Have you had personally any conversation with the Director of the Hongkong & Shanghai Banking Corporation in regard to your debt with Aldecoa?

A. Yes, sir.

Q. State what that conversation was.

A. When I came here to object against four thousand odd pesos which they alleged were overcharged by mistake by the firm of Aldecoa, that is to say, that the twenty-two thousand pesos were not twenty-two thousand pesos but less, I went with Mr. Urquhart to see the Director of the Bank and asked him to deduct that amount. I do not understand English. They were speaking in English, and not understanding to whom was I in debt, I asked: "To whom do I owe?" "Only to us."

Q. Who said that "only to us"?

A. The Director of the Bank.

Q. On what date did that conversation take place?

A. I do not remember; but I have an account here with me and by it you may see, because it was what they demanded from me then.

Towards December 20, 1909.

171 Q. What did your business transactions with Aldecoa & Company consist of?

A. They consisted in that they had delivered me a certain amount, without limit at first, and I kept on buying hemp and shipping it to them and I kept on sending rice and other goods.

Q. When did you stop sending hemp to Aldecoa & Co.?

A. At that time, after I received the telegram and as a consequence thereof, and after coming here and executing that document.

Q. To what telegram do you refer?

A. To a certain telegram; I do not know whether it is still in existence, but more or less it reads: "Your debt to Aldecoa & Company has been assigned to this Bank, therefore you will have to deal with us." In view of that and also of the instrument, I understood that I had nothing else to do with Aldecoa & Company.

Q. And for that reason you thought that your business dealings with Aldecoa were at an end and ceased to do business with them.

Mr. Fisher: That is leading.

Q. Why did you cease to send consignments to the firm of Aldecoa?

A. Because I considered that my debt had been assigned to the Bank, and was in its hands.

Q. Why?

172 A. By the telegram and the document that was signed here.

Q. Where is that telegram?

A. I do not know, I gave the papers to Enrique Gil who has seen it and I think he has got it.

Q. Have you spoken with someone from the Bank about the contents of that telegram?

A. I do not remember.

Q. From the time you stopped to send consignments to Aldecoa & Company to whom did you send them?

A. To Gil Hermanos.

Q. Through whom?

A. Through nobody, because Gil Hermanos, had at that time power of attorney from me, which I gave them because they helped me a good deal. I gave them power of attorney to arrange with the Bank, inasmuch as they said that they would answer for me and I was grateful to them.

Q. How much have you sent on consignment, or how much has Gil Hermanos made by your consignment from the date of that telegram up to the present?

A. Here it is (handing a document which is marked Exhibit "A").

Q. This includes up to December 20, 1909?

A. Yes, sir. I think I can estimate seven or eight thousand pesos.

Mr. Sanz: I ask that this document be marked Exhibit "A" of the witness's deposition.

Q. Who signs this document?

173 A. Gil Hermanos.

Q. Do you know the signature of Gil Hermanos?

A. Yes, sir.

Q. Is that signature authentic?

A. It is Don Enrique's.

Mr. Sanz: I ask that it be marked Exhibit "A."

Cross-examination by Mr. Fisher:

Q. When did you go to Spain?

A. I went to Spain, I do not remember well, but it was towards the end of 1905.

Q. And when did you come back?

A. I returned, I believe in 1906 or 1907, January or February, I do not remember. When I arrived, the arrangement between

my attorney in fact and the Bank was already made. They received me as a settled thing.

Q. What was the reason why you wanted a reduction in your account, that is to say, a reduction of the balance which you appeared to owe to Aldecoa & Company and which was transferred to the Bank?

A. Because that was not the amount of my debt.

Q. But that was the amount appearing in the Books of Aldecoa & Company as a balance against you?

A. No, sir.

174 Q. How did you find that out?

A. Because Escaño also claimed five thousand pesos.

Q. Is it not true that you came to know it as a result of a revision of accounts made by Aldecoa & Company; that is appears on the book that they have charged you a commission for purchases made by you at higher prices than those which appear in the account which they have reduced?

Mr. Sanz: I object because it is not a proper cross-examination.

A. I also knew it by myself. For instance: when they sent one thousand sacks of rice, they sent them as one thousand piculs; I paid for one thousand piculs, which afterwards appeared not to be so many, since there were only nine hundred and fifty piculs.

Q. Did you send hemp on consignment to Aldecoa?

A. Yes, sir.

Q. Was that a consignment on commission of sale?

A. Yes, sir.

Q. Do you know whether or not Messrs. Aldecoa & Company have always credited you with the real price at which they sold your hemp?

Mr. Sanz: It is not a proper cross-examination.

A. That is knowing too much. I could never know whether they really robbed me or not; but it may be taken for granted; I knew what they ought to put because I paid them a commission for that.

175 Q. Is it not true that that is the real motive why you desired to get a reduction of the balance appearing in your account with Aldecoa, because you really knew that they had not credited you with the real price for which the shipments of hemp you sent them to sell on commission had been sold?

A. It was for the reason which I have already given.

Q. In other words: The difference between the amounts appearing in the balance against you in your account with Aldecoa & Company and the balance which you thought should be the real balance, was due to the fact that they had charged you for a greater quantity of rice than that shipped to you and which they had paid for. And in the sale of your hemp here you were not credited with the real price of the sale?

A. Not that. I received, for instance: nine hundred and fifty piculs in one thousand sacks of rice, but they charged me for one

thousand piculs, and of course, there must have been a difference.

Q. Why did you come to know the real amount of the balance appearing in the books of Aldecoa?

A. Before I closed up my agreement with the Bank.

Q. You knew about what you considered to be a fraud committed by Aldecoa after the assignment was made?

A. Of course. If I had known it before I would not have made any claim.

Q. Please examine this letter which we shall mark Exhibit "1" and tell us if this is a letter written by you to the Bank.

176 A. This signature seems to be the signature of Gil Hermanos.

Q. On the date that this letter was written, that is to say, on July 29, were Messrs. Gil Hermanos authorized to sign for you "per pro"?

A. I suppose so.

Q. But you do not admit that they were your attorneys in fact when they wrote that letter?

A. I do not remember. But I gave them power of attorney to arrange this matter.

Q. Have you at any time disapproved this action of Gil Hermanos of writing that letter on the ground that you had canceled the power of attorney given to them?

A. I do not remember.

Q. Do you mean to say that you do not remember whether you have disapproved the act of Gil Hermanos of writing that letter?

A. I remember that I protested.

Q. Have you impeached any of the acts executed by Gil Hermanos as your attorneys in fact in the dealings they had with the Bank by reason of your credit, of the credit that Aldecoa & Company had against you and which was assigned to the Bank?

A. I never impeached anything because I never knew the existence of that letter.

Q. But you knew that they had made the claim appearing in said letter?

177 A. I do not remember.

Q. But did you or did you not know before now that Gil Hermanos has asked for a reduction of that account?

A. I myself asked for the reduction, accompanied by Mr. Urquhart, not once but three or four times, with the Director.

Q. So that you have approved what Gil Hermanos have done in the premises. You have approved the act of Gil Hermanos of writing that letter?

A. That letter, I do not remember.

Q. Did you or did you not approve that act?

A. I neither approved it or disapproved it, because they had done it, I believe that they have done well. Now I do not know whether or not they have done something which is not convenient to me, something erroneous.

Q. Do you know if any answer was received from the Bank to that letter?

A. I know nothing about it.

Q. Please examine this document which we mark Exhibit "2" and tell us whether you have received the original of this letter?

A. I have no news of this letter.

Q. Have not Messrs. Gil Hermanos told you anything about it?

A. No, sir.

178 Q. Have you in your possession the original of this letter Exhibit "2"?

A. I have already told you. I do not know the letter, how am I going to have the original? I have not got it.

Q. Do you remember that after the date of this letter Exhibit "2" written on the month of June, 1908, you paid to the Bank eight thousand pesos on account of the credit ceded to that Bank by Aldecoa & Company against you?

A. I remember that I paid, but it was six thousand pesos. First three thousand, then three thousand, and then eight thousand; fourteen thousand in all. But I do not remember the dates now.

Q. Please examine the copy which we exhibit you of a letter dated August 18, 1908, addressed to you through Gil Hermanos and appearing at pages 253 of of the letter copy book of the Bank, and tell us if you have received that letter through Messrs. Gil Hermanos?

A. I do not remember. I may have received it, but I do not remember.

Q. Do you know whether or not you have the original?

A. I do not know.

Q. Do you know whether you have got it or not?

179 A. I do not know.

Q. If you have not got it will Gil Hermanos have it?

A. I do not know.

Q. Can You look amongst your papers to see if you can find it?

Mr. Sanz: I agree that in case the witness does not present the original, the copy exhibited to him, is exact.

Redirect examination by Mr. Sanz:

Q. In your dealings with Aldecoa by virtue of the understanding you had with that concern, state whether or not you were obliged to send hemp on consignment to Aldecoa & Company while you were a debtor of that firm?

A. It was the custom to send the hemp being a debtor.

Q. And why did you stop sending hemp on consignment to Aldecoa?

A. By reason of what I said before. I believe that I have ceased to be a debtor.

Q. You stated before that the bank said "with us"?

A. When I learned what happened with Escaño and others, I came here to see, and went to Aldecoa & Company and indeed, they were honest. I consider that they behaved always honestly with me.

180 I never doubted Urquhart. They were honest because they told me "there is this, and that difference" and then I asked

who was going to credit me with that difference, and Mr. Urquhart told me the Bank would. He accompanied me and bothered about the whole thing; I said, "please tell me whom I owe" and the Director said, "here, to the Bank."

Q. When was that and when did you stop your consignment to Aldecoa?

A. I had already, for sometime before, been sending hemp to Gil Hermanos. But as I say, since that telegram to which I referred before, we sent immediately someone here to Manila and this deed was executed; and from that time I ceased sending hemp to Aldecoa.

Cross-examination by Mr. Fisher:

Q. To what instrument do you refer in your last answer?

A. To that deed of security. And this is better for me because I paid Aldecoa eight or nine per cent and the Bank only charged me, I think seven per cent, giving more security because my brother said that not only would the debt be guaranteed with my property but also with his, and the Bank was better pleased getting more security so that it accepted them.

Q. Has the Bank told you at any time not to send hemp
181 to Aldecoa and Company?

A. They never told me anything about that.

Q. Have they not made you any suggestion in regard to that?

Q. The deed to which you refer is that in which you acknowledged to be in debt to the Bank and not to Aldecoa?

A. Yes, I believe so. In the amount of Aldecoa's balance but I did not owe that amount and the Bank would take that into account.

I certify that the foregoing is the correct transcription of the stenographic notes taken by me in this case.

(Signed)

JOSE SOTELO.

I, J. McMicking, Clerk of the Court of First Instance of Manila, hereby certify that the witness who gave the foregoing testimony was duly sworn by me; that the said testimony was given at the place and time above mentioned, to wit: in the Clerk's Office of the Court of First Instance of the City of Manila.

(Signed)

J. McMICKING,

Clerk of the Court,

Statement of Commissions Charged on Sales.

Folio of copybook.	Dates.	No. of sale account.	Goods.	Commission.	Total.
	1907.				
62	June 17.	27/2	125 bales hemp	P38.83	
64	" 28.	29/2	100 "	33.91	
67	July 12.	32/2	160 "	54.41	
80	Sept. 2.	40/2	200 "	63.21	
84	" 13.	47/2	150 "	47.52	
89	" 27.	50/2	160 "	47.84	
94	Oct. 11.	55/2	60 "	17.03	
99	" 24.	60/2	181 "	52.14	
103	Nov. 6.	63/2	110 "	32.17	
166	" 20.	65/2	150 "	42.15	
112	Dec. 20.	72/2	132 "	36.98	
	1908.				
117	Jan. 13.	4/3	151 "	43.48	
123	" 30.	9/3	160 "	46.12	
129	Feb. 20.	15/2	225 "	57.62	
133	March 11.	17/3	255 "	58.96	
140	" 31.	24/3	250 "	56.78	
143	April 7.	26/3	140 "	33.32	
147	" 29.	30/3	180 "	46.46	
155	June 8.	37/3	400 "	184.60	
158	" 18.	40/3	309 "	143.04	
	Carried forward.....			P1,136.57	

Folio of copybook.	Dates.	No. of sale account.	Goods.	Commission.	Total.
183	Brought forward			P1,136.57	
	1908.				
171	July 31.	51/3	253 bales hemp.	100.59	
176	Aug. 15.	53/3.	188 " "	77.36	
186	Sept. 11.	58/3	262 " "	110.39	
191	" 30.	63/3	225 " "	96.16	
198	Oct. 12.	68/3	180 " "	76.31	
203	" 23.	73/3	139 " "	61.33	
206	Nov. 4.	75/3	236 " "	103.64	
211	" 21.	80/3	47'01 pp. coprax	6.93	
212	" 21.	79/3	149 bales hemp.	66.46	
217	Dec. 5.	84/3	100 " "	44.27	
219	" 19.	86/3	115 " "	54.16	
220	" 19.	87/3	44'34 pp. coprax.	6.87	
	1909.				
224	Jan. 4.	2/4	240 bales hemp.	115.69	
233	" 28.	8/4	62'67 pp. coprax.	10.15	
235	" 28.	10/4	330 bales hemp.	140.90	
240	Feb. 15.	14/4	266 " "	104.93	
243	" 25.	18/4	37'49 pp. coprax.	5.90	
245	March 3.	19/4	185 bales hemp.	77.59	
247	" 12.	21/4	163 " "	65.97	
250	" 29.	24/4	182 " "	71.03	
253	April 12.	25/4	117 " "	49.05	
256	" 24.	28/4	244 " "	96.69	
263	May 10.	32/4	105 " "	42.29	
265	" 22.	35/4	144 " "	56.84	
	Carried forward			P2,778.82	

Brought forward.....				P2,778.82
1909.				
269	June 4	39/4	310 bales hemp.....	142.53
272	" 18.	42/4	195 "	82.11
277	July 3.	50/4	30'99 pp. coprax.....	5.27
281	" 3.	49/4	276 bales hemp.....	107.81
285	" 20.	54/4	12/4 red wine.....	8.40
287	Aug. 2.	56/4	495 bales hemp.....	225.35
298	Sept. 3.	68/4	455 "	216.61
300	" 13.	69/4	185 "	81.00
311	Oct. 11.	77/4	400 "	202.20
313	" 22.	82/4	180'28 pp. coprax.....	35.72
315	" 25.	79/4	229 bales hemp.....	113.40
318	Nov. 9.	83/4	158 "	75.26
321	" 24.	86/4	310 "	147.72
326	Dec. 4.	90/4	209 "	103.60
329	" 17.	93/4	185 "	89.03

P4,414.83

Commissions Charged on Purchases and Payments.

Folio of copybook.	No. of sale account.	Goods.	Commission.	Total.
1907.				
c/f 55	Aug. 27.	Cigarettes	P15.20	
" 57	Sept. 7.	Rice	28.25	
263	" 30.	Cigarettes	15.20	
340	Nov. 6.	"	7.60	
Carried forward			P66.25	

"	134	"	27.	15/4	Cigarettes	7.60
D.	..	April	24.	...	Draft on wine	16.42
D.	..	"	30.	...	"	9.94
<hr/>						
		Carried forward.....				P211.28 P4,414.83
186		Brought forward				P211.28 P4,414.83
		1909.				
D.	180	Dec.	2.	48/4	Cigarettes	P4 56
"	186	"	9.	50/4	"	12.52
"	188	"	16.	52/4	"	4.92
		"	17.	...	Draft on wine	8.28
<hr/>						
						P241.56

Total of commissions charged and collected from June 17, 1907, on which date the dealing
with Gil Hermanos started, until October 17, 1909

P4,656.39

E. & O. E.

Manila December 20, 1909.

(Sgd.)

Sealed:

GIL HERMANOS, *Manila*.

GIL HERMANOS.

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EXHIBIT "1."

Gil Hermanos.

Birag (Catanduanes) and Manila.

P. O. Box 172.

Cable Address: "Egil."

Commission & Consignment.

MANILA, June 29, 1908.

To the Hongkong & Shanghai Banking Corporation, Present.

DEAR SIRs: On this date the obligation erroneously contracted by me by virtue of the instrument dated February 28, of last year, to pay you P8,000, becomes due.

Messrs. Aldecoa & Company have offered me, of their own accord, a reduction of P4,000 in the balance resulting against me for charges unduly made on my account and credits omitted therefrom, only during two of the nine years which I was dealing with them.

Having proposed a revision of our account, they have absolutely refused, and this gives me a right to believe that the amounts which they have defrauded me are larger than the balance which still appears against me.

I have the money and I am ready to deliver it; but I do not want at all that this would be interpreted as an acknowledgment on my part of that balance as true, after having discovered the fraud committed upon me.

I have tried several times before now to find a way to secure the interest of all parties concerned; but the defiant attitude of those gentlemen refusing absolutely to show me the books in order to find out the truth of what they themselves have discovered to me, makes it impossible for us to come to any understanding.

If you, with your influence, can succeed in making those gentlemen change their attitude, I shall not only pay immediately the P8,000, but I shall be greatly obliged to you for this favor.

Yours very truly,

MARTIN DE ACHAVAL,
By GIL HERMANOS.

Seal: Gil Hermanos, Manila.

Stamped: Received July 2, 1908. Answered by Mr. Stephen J. R.

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EXHIBIT "2."

MANILA, July 1, 1908.

Mr. Martin de Achaval, c/o Gil Hermanos, Manila.

DEAR SIR: We are in receipt of your favor of June 29, regarding

the payment of the P8,000 due on this date as per your contract of February 8, 1907.

In answer, allow us to state that we regret to know that there are some difficulties between yourself and Messrs. Aldecoa & Company in Liquidation, which difficulties apparently cannot be satisfactorily adjusted. However, we are utterly unable to attend to your request that we intercede in your favor, since we have no right in the liquidation of that concern except as a mere creditor, and any attempt on our part to interfere in the liquidation might seriously prejudice our rights against those who are severally liable with that concern for the obligation which it has towards us.

We notice in your letter that by reason of your differences with Aldecoa & Company you have decided to withhold the payment which you owe to this Bank. We hope that you will consider this matter with more reflexion and that you shall not insist in
190 your determination, since your obligation with this Bank is completely independent from the claims which you have against Aldecoa & Company in Liquidation. As you well know, Aldecoa & Company has been and is still indebted to this Bank in a large amount of money. In order to reduce this obligation, Aldecoa & Company sold and assigned absolutely and definitely in our favor a debt for a specific sum which you owed them, secured by a mortgage on real estate. At the time of making this assignment, that debt was acknowledged and ratified by you, and you undertook to pay this sum to this Bank. Naturally the Bank must insist that you comply with your obligation in full. If you have any claim against Aldecoa & Company, no matter how just and well founded it may be, it cannot affect your liability to comply with an obligation contracted by you in our favor. We are in no manner or degree liable for the obligations of Aldecoa & Company towards you, and they cannot constitute a set-off on your part against your debt to us.

We shall greatly appreciate that you should give your thought to this matter as soon as possible, and if you allow us to make a suggestion to you, we beg you to submit it to your lawyers for its confirmation. Unless you pay us the P8,000 and interest now due, we shall be compelled to bring suit for the whole amount of over
191 P16,000 which you still owe and which, under the terms of our contract, becomes due in full on non-payment of any of the installments agreed upon.

Waiting for an early reply, we remain

Yours very sincerely,

HONGKONG & SHANGHAI BANK-
ING CORPORATION.

By A. G. STEPHEN, *Director*.

192 This case was set for trial on the 22nd day of January, 1912, at 8:15 a. m., the hearing of the case being continued for several dates during which the oral, written and documentary evidence to be hereinafter set forth, was offered in support of the allegations of the respective parties litigant.

During the course of the trial and on February 6, 1912, plaintiff and defendants filed the following amended complaint, cross-complaint, and amended answers.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 8519.

HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff,
VS.

ALDECOA & COMPANY, in Liquidation; DOÑA ISABEL PALET VIUDA de Aldecoa, Don Zoilo Ibañez de Aldecoa, Don Joaquín Ibañez de Aldecoa, Don Alejandro Macleod, and Doña Cecilia Ibañez de Aldecoa, Defendants.

Amended Complaint.

Now comes plaintiff in the above entitled case and as a
193 cause of action against the above named defendants, alleges:

I.

That plaintiff is at present and has, at all dates mentioned in this complaint, been a Banking Corporation duly organized and existing in accordance to and by virtue of the laws of the British Colony of Hongkong, duly licensed to engage in business in the Philippine Islands.

II.

That at all times mentioned in this complaint the defendant Aldecoa & Company was a general mercantile partnership (sociedad mercantil regular colectiva) duly organized and existing under the laws of the Philippine Islands, having its central office in the City of Manila, Philippine Islands; that on December 31, 1906, by reason of the expiration of the term established in the articles of partnership for its duration, the firm of Aldecoa & Company entered into liquidation, Mr. William Urquhart having been duly authorized to take charge of the liquidation of said partnership.

III.

That at all dates mentioned in this complaint defendants Isabel
194 Palet, viuda de Aldecoa, Alexander Macleod, Joaquín Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, were general and industrial partners in the said firm of Aldecoa and Company.

IV.

That on February 23, 1906, the defendant Aldecoa & Company and defendants Doña Isabel Palet widow of Aldecoa, Don Zoilo Ibañez de Aldecoa and Don Joaquín Ibañez de Aldecoa, executed in favor of plaintiff corporation an instrument of acknowledgment of debt and mortgage; of which instrument there is a copy attached to this complaint, marked Exhibit "A" for the purposes of identification, and made part of this complaint.

V.

That afterwards, to wit: on or about March 23, 1906, defendants Isabel Palet widow of Aldecoa, Zoilo Ibañez de Aldecoa and Joaquín Ibañez de Aldecoa, in order to correct the erroneous description of one of the pieces of property mortgaged to the plaintiff bank by virtue of document Exhibit "A," and in regard to defendant Isabel Palet in order to extend to another piece of property of her own the mortgage security executed by her by virtue of Exhibit "A," executed in 195 favor of the plaintiff corporation a public instrument, a copy of which is attached to this complaint, marked Exhibit "B" and made part hereof.

VI.

That afterwards, to wit: on December 22, 1906, the defendant Aldecoa & Company, in order to increase the security given to the plaintiff bank executed, in favor of said bank, a public document, a copy of which is attached to this complaint, marked Exhibit "C" and made part hereof.

VII.

That afterwards, to wit: on the 31st day of March, 1907, defendant Aldecoa & Company, in order to increase the security given to the plaintiff bank executed, in favor of said bank, a public instrument, a copy of which is attached to this complaint marked Exhibit "E," and made part hereof.

VIII.

That afterwards, to wit: on January 30, 1907, defendant Aldecoa & Company, in order to increase the security given to the plaintiff bank executed, in favor of said bank, a public instrument, a copy of which is attached to this complaint marked Exhibit "G," and made part hereof.

IX.

That afterwards, to wit: on March 31, 1907, defendant Aldecoa & Company, in order to increase the security given to the plaintiff bank, executed in favor of said bank, a public instrument, a copy of

which is attached to this complaint, marked Exhibit "F" and made part hereof.

X.

That afterwards, to wit: on August 30, 1907, defendant Aldecoa & Company, in order to increase the security given to the plaintiff bank, executed in favor of said bank, a public instrument, a copy of which is attached to this complaint, marked Exhibit "D" and made part hereof.

XI.

That by virtue of the agreement contained in a contract marked Exhibit "A" attached to this complaint and made part hereof, the defendant firm, Aldecoa & Company, was obliged to pay to plaintiff corporation the annual sum of P50,000.00 on account of its debt in account current during the years 1906, 1907, 1908, 1909 and 1910, until such debt should become reduced to the sum of P225,000.00 Philippine currency, on January 1st, 1911.

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XII.

That neither the defendant Aldecoa & Company nor any other of the defendants Isabel Palet, Alejandro Macleod, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa, nor any other person in their name, has paid the plaintiff corporation the amount of money which said defendant Aldecoa & Company was obliged to pay by virtue of the agreement contained in said document Exhibit "A"; and said firm of Aldecoa & Company is at present indebted to the plaintiff corporation in the sum of P412,504.89, which amount is at present due and payable in full.

Wherefore, plaintiff corporation asks this Court to render judgment in its favor and against the defendants, sentencing said defendants to pay jointly and severally the said amount of P412,504.89 together with the interest thereon at the rate of seven per cent (7%) per annum, and the costs of this action; and that in case the said sum should not be satisfied by said defendants or any of them, on or before the 1st day of the term of this Court following that in which the judgment has been rendered, then to proceed in the manner established by the law of Civil Procedure now in force, to *sale* at public auction the real and personal property mortgaged in favor of plaintiff corporation to secure the obligation of the defendant Aldecoa & Company, and that the proceeds of said sale be applied to the satisfaction of said judgment, and that plaintiff corporation be granted any other remedy which the Court may deem just and equitable.

Manila, P. I., January 31st, 1912.

HAUSSERMANN, COHN & FISHER,
(Sgd.) p. p. F. C. FISHER,
Attorneys for Plaintiff.

Received copy this 6th day of February, 1912.

(Sgd.) CHICOTE AND MIRANDA.

Received copy this 6th day of February, 1912. (Sgd.) A. Sanz.

199

EXHIBIT "A."

Deed of Credit.

Know all by these presents, that we, Don Joaquín Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31st, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to; Don Zoilo Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, through an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes on July 31st, 1904, assisted by and with the consent of my said mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow of Señor Don Zoilo Ibañez de Aldecoa, by virtue of an instrument ratified and executed before the Notary Public of the Villa y
 200 Corte de Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on December 31st, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to legally execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, all of them, parties of the first part; and Mr. Harry Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the "Hongkong & Shanghai Banking Corporation" by virtue of the representation and powers conferred to me by the letter of attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco Asis Caballero y Mediano, Vice-Consul of Spain for the British

Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul for the same Colony, and registered on February 26, 1898, at Sheet No. 10, bis, inscription No. 1, Volume 2 of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part, hereby make it known:

I. That Don Joaquin, Don Zoilo, and Doña Cecilia Ibanez de Aldecoa y Palet, are joint owners in undivided equal shares, at the rate of one third each, of the following property, to wit:

A. Urban property. A lot with the camarine of strong materials with roof of galvanized iron built within its area, situated in Calle Jolo of the district and Judicial Section of Binondo and North demarcation of the Registry of the Property of this Capital and designated at present by the Government police No. 6. It is bounded on the right of its entrance of house and lot No. 4 belonging to the heirs of Don Jose Maria Fabie; on the left by house and lot No. 8 of Don Jose Varela y Miciano, and on the back by Binondo River. The whole of the lot occupies a superficial area of 1308 square meters and 23 decimeters, of which 393 square meters and 58 decimeters are covered by the building. This property is registered at folios 181, 186, and 187, Volumes 6 and 48 of the Registry of Property of this Capital; books 3 and 13 of the Section of Binondo, property No. 111, inscriptions Nos. 5, 6 and 7.

Fol. 188 vto. Vol. 13, Binondo Section and 48 of the Archive, property No. 111 duplicate, Inscription 8th.

II. That the Excelentisima Senora Dona Isabel Palet y Gabarro, and her children Don Joaquin, Don Zoilo and Dona Cecilia Ibanez de Aldecoa y Palet, are joint owners in equal undivided shares, at the rate of one fourth each of the following property, to wit:

Three buildings joined under the name of "Camarines de la Barraca" the reason for joining them being the fact that they are used as warehouses, the description of which being as follows:

B. First. Urban property, consisting of a masonry camarine with iron roof, called "La Prensa" because it contains a hemp press, with the lots on which it is built, said property being situated in Calle Barraca of the district of Binondo, designated by police No. 5 and bounded on the right of its entrance by one of the three properties to wit: that designated with No. 7 of the same street, on the left by a lot without number which is the third of the three properties in question, and on the back by the lot without number of Calle Carenero belonging to the Hacienda; its superficial area measures 1,875 square meters with 84 square decimeters, of which the building occupies an area of 1,553 square meters and 74 square centimeters. This property is registered at folios 70, 72, 73 and 190, Volumes 6 and 48, Book 3 of Section of Binondo, property No. 91, annotations letters C, Ch and E.

Fol. 191 vto. Vol. 13, Section of Binondo and 48 Archive, property No. 92 duplicate, Inscription 7.

C. Second. Urban property, consisting of a house and a camarine or bodega which is an accessory thereof, of strong materials with the lot on which they are built, situated in Calle Barraca of the district of Binondo and designated at present with No. 7. It is bounded on the right of its entrance by house and lot No. 9 now belonging to Dona Maria C. Vales y San Juan, formerly of the late Don Vicente Vales, on the left by camarine and lot No. 5 hereinbefore described and on the back by lot without number of Calle Carenero of the Hacienda, its superficial area being 564 square meters and 94 square centimeters, of which the building occupies 499 meters and 69 centimeters. This property is registered at folios 76, 78, 79 and 198, Volumes 6 and 48 Book 3 of Binondo Section, property No. 92, annotations letters C, Ch, and E.

Fol. 200, Volume 13 Section Binondo and 48 Archive, property No. 91 duplicate, Inscription 7th.

204 D. Third. Urban property, consisting of a strong material camarine built on its own lot, situated in Calle Barraca of the district of Binondo, without police number as yet. It is bounded on the right of its entrance by house No. 5 first described under letter B, on the left also by house No. 5 of the Presses and on the back by lot without number of Calle Carenero belonging to the Hacienda. It has a superficial area of 1,153 square meters and 26 square centimeters, of which the building occupies 606 square meters and 16 square centimeters. This property is registered at folios 82, 84, 85 and 202, Volumes 6 and 48, Book 3 of Binondo Section, property No. 93, annotations letters C, Ch, and E.

Fol. 293 vto. Volume 13, Section Binondo and 48 Archive, property No. 93 duplicate, Inscription 7th.

E. Urban property, consisting of nine houses and their outbuildings of strong materials with the large lot on which they are built situated and fronting, for the effects of this description, on calle Real of the suburb of Malate, judicial district and demarcation of
205 the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Tunon and of Don Segundo Javier; on the left by calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8,070 square meters 76 centimeters also square.

Fol. 210, Volume 3, Book 8, Malate Section, property No. 384, annotation letter B.

III. That the Hongkong & Shanghai Banking Corporation had granted to the firm of Aldecoa and Company a certain credit in current account to attend to its mercantile operations, of which use had been made up to this date, and in order that it may appear in due form, as well as to make clear the conditions stipulated to that effect, we execute the present instrument by virtue of which we solemnly state:

IV. That the Hongkong & Shanghai Banking Corporation shall keep open in favor of the general mercantile partnership Aldecoa and Company a credit in current account up to the sum of Four Hundred and Seventy-five Thousand Pesos (P475,000) Philippine Currency, part of which have already been used.

V. That the debtor firm of Aldecoa and Company secures the payment of its credit in favor of the Hongkong & Shanghai Banking Corporation during the whole period of existence of this agreement with all the hemp bought by the firm or sent to the
206 same for sale by its debtors or other persons who may be in similar case, and therefore, the general mercantile partnership of Aldecoa and Company binds itself to deposit with the Hongkong & Shanghai Banking Corporation all the amounts derived from the sales of said product in Manila, said firm Aldecoa and Company being, however, authorized to withdraw these deposits by issuing checks against its current account in order to attend, with the amounts so drawn, to the development of its business in accordance with the continuation of its credit opened and acknowledged in the present agreement and without prejudice to the reduction of said credit in the form hereinafter stipulated.

VI. That the debtor Aldecoa and Company binds itself to send to the Hongkong & Shanghai Banking Corporation in Manila, at the end of each month, a written notice giving a detailed and complete statement of the quantity of hemp which said company has on hand in Manila and in the provinces.

VII. The credit in current account which the Hongkong & Shanghai Banking Corporation has opened in favor of the general mercantile partnership, Aldecoa and Company, shall continue in force during the term of this agreement, provided, that said debtor company shall continue to make use of said credit through checks issued against the said Bank, with the sole object of applying those funds
207 to the purchase of hemp, rice, and other products related with the object of said partnership, and subject to the obligation on the part of the debtor, Aldecoa and Company, to reduce its debit balance down to the sum of Four Hundred and Twenty-five Thousand Pesos (P425,000) on or before December 31, 1906, and to continue reducing said debit balance at the rate of at least Fifty Thousand Pesos (P50,000) per year until said debit balance be reduced to the sum of Two Hundred and Twenty-five Thousand Pesos (P225,000) Philippine Currency, on January 1, 1911, on which event, the creditor Bank reserves to itself the right to enter into new stipulations with the debtor company for the total payment of its debt, provided, that the yearly instalments for the reduction of the capital shall begin to run from the 1st. day of January 1906, so that the first Fifty Thousand Pesos (P50,000) Philippine Currency shall be paid on December 31, 1906, and so on until this stipulation is complied with, that is to say, for the sake of clearness:

(a) Up to and until December 31, 1906 the credit shall be of four hundred and seventy-five thousand pesos (P475,000) Philippine Currency.

(b) Up to and until December 31, 1907, the credit shall be of four

hundred and twenty-five thousand pesos (P425,000) Philippine Currency.

208 (c) Up to and until December 31, 1908, the credit shall be of three hundred and seventy-five thousand pesos (P375,000) Philippine Currency.

(d) Up to and until December 31, 1909, the credit shall be of three hundred and twenty-five thousand pesos (P325,000) Philippine Currency.

(e) Up to and until December 31, 1910, the credit shall be of two hundred and seventy-five thousand pesos (P275,000) Philippine Currency.

So that on January 1, 1911, the credit shall not be for a greater sum than two hundred and twenty-five thousand pesos (P225,000) Philippine Currency.

VIII. In the event the debtor company should succeed in reducing the credit existing in its favor in the provinces by full or partial payment to said debtor company by its debtors, the amount which this company might receive for this reason, shall be paid into the Hongkong & Shanghai Banking Corporation on account of its debt, as additional payments to those agreed upon in the foregoing clauses.

IX. The said credit in current account shall earn in favor of the creditor Bank, a reciprocal interest of seven per cent (7% to be liquidated and payable at the end of every six months.

209 X. The firm of Aldecoa and Company guarantees the faithful and exact compliance on its part with all the obligations entered into by virtue of this document with the pledge of sixteen (16) shares of the capital stock of the Banco Espanol Filipino of this City which it owns, numbered from 2,356 to 2,371 inclusive and 450 shares which it also owns of the capital stock of the Sociedad Anonima "Compania Maritima" marked with Nos. 51 to 100 inclusive and 301 to 700 also inclusive, said shares being delivered to the Hongkong & Shanghai Banking Corporation for said Bank to keep the same in its possession as a deposit and with the diligence of an honest and reasonable man.

XI. We, Don Fernando Zobel y de Ayala in the name and on behalf of Dona Isabel Palet y Gabarro, Don Joaquin Ibanez de Aldecoa and Don Zoilo Ibanez de Aldecoa, guarantee furthermore the exact and faithful compliance with all the obligations contracted by the firm of Aldecoa and Company, with the voluntary special mortgage which we now constitute on the shares or interest which we respectively have in the property above described, the interest which we have on the property described with letter "A" being security for the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five centavos (P13,847.75) Philippine Currency of the principal with the interest thereof; that
210 which is described with the letter "B" for the sum of fifty five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and interest thereof; that described under letter "C" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three

centavos (P55,468.03) Philippine currency of the principal and the interest thereof; that described under letter "D" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (55,468.03) Philippine currency of the principal and interest thereof; and that described under letter "E" for the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98) Philippine currency of the principal and the interest thereof; each one of said pieces of property being also responsible in the sum of five hundred pesos (P500) for costs and judicial expenses, the balance of seventy-three thousand five hundred and ninety-eight pesos and eighteen centavos (P73,598.18) Philippine currency being secured by the shares of stock referred to in the preceeding paragraph and which are given in pledge.

XII. That by common agreement all the contracting parties fix the value of the interest in the mortgaged property as follows, to wit: that in the property described under letter "A" in 211 the sum of thirteen thousand eight hundred and forty seven pesos and seventy-five centavos (P13,847.75); that in the property described under letter "B" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that in the property described under letter "C" in the sum of fifty-five thousand four hundred and sixty eight pesos and three centavos (P55,468.03); that in the property described under letter "D" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); and that in the property described under letter "E" in the sum of two hundred and twenty-one thousand one hundred and forty nine pesos and ninety-eight centavos (P22,149.98); which respective values shall be the upset price for the first auction which in case of breach of the present obligation must take place in accordance with the existing laws and those which in the future might be promulgated on the premises waiving, therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

XIII. It is a stipulated condition that the creditor Bank shall not have the right to ask for the sale of the property above described to reimburse itself with the proceeds thereof of the total amount of the debt of the firm of Aldecoa and Company, until after the term of five years (5) fixed for the complete payment of the same, shall have expired; being restricted in the meantime 212 to receive from the debtor company the yearly sum of fifty thousand pesos (P50,000) which has been fixed for the partial yearly payment, and which is secured by the shares of stock above enumerated, even if the firm of Aldecoa and Company should enter in its period of liquidation before the expiration of the said five years, since to this effect it is stipulated and agreed that the said term of five (5) years shall not be reduced to a lesser period of time for the mere fact that the firm of Aldecoa and Company goes into or places itself in liquidation, either by reason of the expiration of the term of partnership or by reason of being con-

venient to its interests and also whether said liquidation shall be carried privately or in an official or public manner, for all of which the debtor Company is from now empowered without the term fixed in this document for the payment of its debt, being thereby diminished.

XIV. Mr. Harry Davies Campbell Jones in the name and on behalf of the Hongkong & Shanghai Banking Corporation does accept this document as to each and every part thereof, declaring to have received the sixteen (16) shares of stock of the Banco Espanol Filipino and the four hundred and fifty (450) shares of stock of the Sociedad Anonima "Compania Maritima" to which reference is made in paragraph X of this document, for said
213 Bank which I represent, to preserve and keep the same as a deposit while the present obligation is in force.

XV. Both contracting parties submit themselves to the jurisdiction of the Judges and Courts of this Capital for the settlement of all judicial questions which might be raised by reason of the non-compliance of this contract, expressly waiving therefore the jurisdiction of the forum of their respective domiciles.

XVI. That both contracting parties bind themselves to execute at any time whatever documents may be necessary to make effective or to perfect the corresponding rights and obligations which by this document it is intended to acknowledge and establish and which may be necessary for the registration of the mortgages or other obligations herein granted.

In witness whereof, we sign these presents in triplicate in Manila, this 23rd day of February, 1906.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.)	H. D. C. JONES, <i>Manager.</i>
(Sgd.)	ALDECOA & CIA.
(Sgd.)	FERNANDO ZOBEL.
(Sgd.)	ZOILO I. DE ALDECOA.
(Sgd.)	JOAQUIN I. DE ALDECOA.

Signed in the presence of:

(Sgd.)	ANTONIO HIDALGO.
(Sgd.)	JOSE MA. ROSADO.

214 UNITED STATES OF AMERICA,
City of Manila, Island of Luzon,
Philippine Islands, ss:

In the City of Manila this 23rd day of February, 1906, before me personally appeared Don Joaquin Ibanez de Aldecoa y Palet; Don Zoilo Ibanez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, Don Alejandro Macleod and Mr. Harry Davies Campbell Jones, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Messrs. Joaquin Ibanez de Aldecoa, Zoilo Ibanez de Aldecoa, Fernando Zobel y de Ayala and Harry Davies Campbell Jones, exhibited to me their respective certificates of Cedula Nos.

A-1,330,177, A-1,330,173, A-1,330,174, and A-1,324,201, issued by the Collector of Internal Revenue in this City the 25th of January, 25th of January, 25th of January and 10th of January, 1906; Mr. Alejandro Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

JOSE MA. ROSADO,
Notary Public.

My commission expires on December 31, 1906.

215 Filed at 11:35 a. m. on this date according to entry No. 230, page 98 Volume 11 of the Diary.—Manila, February 28, 1906. (Sgd.) Claudio Gabriel.

Fees: PO. 75—No. 1 Ar.

216

EXHIBIT "B."

Know all by these presents, that we, Don Joaquin Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to; Don Zoilo Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, through an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 21, 1904, assisted by and with the consent of my said mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow of Señor Don Zoilo Ibañez de Aldecoa, by virtue of an instrument ratified and executed before the Notary Public of the Villa y Corte de Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on

217 December 31, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to legally execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique

Barrera y Caldes, on December 31, 1896, and modified by another instrument dated February 20, 1898, executed and ratified before being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, all of them, parties of the first part; and Mr. Harry Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the Hongkong & Shanghai Banking Corporation by virtue of the representation and powers conferred to me by the letter of attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco de Asis Caballero y Mediano, Vice-Consul of Spain for the British Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul
218 for the same Colony, and registered on February 26, 1898, at sheet No 10, *bis*, inscription No. 1, Volume 2 of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part, hereby make it known:

I. That by virtue of an instrument executed in this City before the Notary Public thereof Don Jose Ma. Rosado on the 23rd day of February, 1906 the Hongkong & Shanghai Banking Corporation declared to have and to keep open in favor of the general mercantile partnership Aldecoa and Company a credit in current account up to the sum of four hundred and seventy five thousand pesos (P475,000) Philippine Currency under the terms and conditions set forth in said instrument.

II. That to guarantee the payment of the above mentioned credit the Most Excellent Senora Dona Isabel Palet y Gabarro, and her children Don Zoilo and Don Joaquin Ibanez de Aldecoa y Palet executed in favor of the Hongkong & Shanghai Banking Corporation a mortgage of the interest which they have respectively on several pieces of property amongst which is included a certain property which is described as follows:

E. Urban property, consisting of nine houses and their outbuildings of strong materials with the large lot on which they are built situated and fronting for the effects of this description on
219 calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Tunon and of Don Segundo Javier; on the left by calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8070 square meters 76 centimeters also square.

III. That there being an error in the description of the property above referred to, wherein it is stated that there are nine buildings thereon where in fact there are only eight, we execute the present document by virtue of which, we most solemnly agree:

IV. That the foregoing described property on which the Most Excellent Senora Dona Isabel Palet y Gabarro and her children Don Zoilo and Don Joaquin Ibanez de Aldecoa have executed a mortgage as aforesaid on the respective shares of interest which they have therein, that is to say, a share equal to one fourth each, is described as follows:

E. Urban property, consisting of eight houses and their outbuild-

ings of strong materials with the large lot over part of which they are built, situated by its front in calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by properties of the Clergyman Don Silvino Lopez Tunon and Don Segundo Javier; on the left by calle San Antonio Abad and on the back by the sea; the whole lot measuring a superficial area of 8870 square meters and 76 centimeters also square.

V. That the property above described shall be liable in regard to the interest which we mortgage for the sum of two hundred and three thousand nine hundred and eighty five pesos and seventy nine centavos (P203,985.79) of the principal above stated and the interest thereof, besides the sum of five hundred pesos (P500) Philippine currency for costs and expenses in the event of litigation.

VI. That Dona Isabel Palet y Gabarro represented by me, Don Fernando Zobel y de Ayala, in order to enlarge the guaranties offered for the credit above referred to by this same document, executes a voluntary special mortgage on the following property:

F. Urban property, consisting of a house of strong materials with galvanized iron roof and the lot on which it is built, designated at present with No. 561, situated by its front in calle Real of the suburb of Malate judicial district and demarcation of the Registry of Property, of this City. Its front measures 20 meters; on the right of its entrance 42 meters 50 centimeters; on the left 30 meters and 20 centimeters; and on the back on a straight line running from North to South 16 meters and 20 centimeters, on a line running from East to West 12 meters and 85 centimeters, both sides forming an acute angle in the direction from East to West and in the third line which with the former forms another angle and closes the poligone in a South to North direction, 5 meters and 16 centimeters, its total area measuring 741 square meters with 72 square centimeters. Said property is bounded on the right of its entrance by a lot without number owned by Anacleta Vitan; on the left by the Plaza de Polvorin; and on the back on the side which measures 16 meters with 20 centimeters and 12 12 meters and 85 centimeters respectively, by the lot belonging to Dona Agapita de la Cruz, and on the side which measures 5 meters and 16 centimeters by house and lot without number of the Excelentissimo Senor Don Zoilo Ibanez de Aldecoa y Aguirre.

VII. That by common agreement the contracting parties herein determine that the property described under letter "F" shall secure the payment of the sum of twenty two thousand eight hundred and eighty five pesos and sixty centavos (P22,885.60) Philippine currency of the principal of the credit above referred to, in other words, that which is stated in the said deed of February 23, 1906, together with the interest thereof, besides the sum of five hundred pesos (P500) Philippine currency for costs and expenses in the event of litigation.

VIII. That by common agreement all the contracting parties fix the value of the interest in the property above mortgaged as follows: That marked with letter "E" in the sum of two hundred and

three thousand nine hundred and eighty five pesos and seventy five centavos (P203,985.75) and that described under letter "F" in the sum of twenty two thousand eight hundred and eighty five pesos and sixty centavos (P22,885.60) which value shall be the upset price for the first auction which, in case it becomes necessary in accordance with the stipulations contained in the deed of February 23rd, 1906, above referred to, may have to take place in accordance with the existing laws and those which in the future might be promulgated on the premises, waiving therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

IX. All the contracting parties herein declare that this document is only an addition to the said deed of February 23, 1906, of which it is made part, since we declare in force each and every one
223 of the parts of that deed without any other alterations than those contained herein.

Under the foregoing terms and conditions we execute the present document which we bind ourselves to keep and comply with faithfully and fully in each and every part hereof, in the most solemn form under the Law.

In witness whereof, we sign the present instrument in triplicate in Manila, this 23rd day of March, 1906.

(Sgd.)

JOAQUIN I. DE ALDECOA.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.)

H. D. C. JONES.

(Sgd.)

ZOILLO I. DE ALDECOA.

(Sgd.)

FERNANDO ZOBEL.

(Sgd.)

ALDECOA Y CIA.

Signed in the presence of:

(Sgd.) POF. VILL. BERNABE.

(Sgd.) B. PABALAN.

UNITED STATES OF AMERICA,

City of Manila, Island of Luzon,

Philippine Islands, ss:

In the City of Manila this 23rd day of March, 1906, before me personally appeared Don Joaquin Ibanez de Aldecoa y Palet, Don Zoilo Ibanez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, and Don Harry Davies Campbell Jones, whom I know to
224 be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Said Don Joaquin and Don Zoilo Ibanez de Aldecoa, Don Fernando Zobel and Mr. Harry Davies Campbell Jones, exhibited to me their respective certificates of cedula Nos. A-1,330,177, A-1,330,173, A-1,330,174, A-1,324,201, issued by the Collector of Internal Revenue of this City, the first three on the 25th of January, 1906, and the last on 10th of January, 1906, Mr. Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof, I have hereunto set my hand and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

JOSE MA. ROSADO,
Notary Public.

My commission expires on December 31, 1906.

[Two documentary seals of the Internal Revenue, One of P3.00 and another of P1.00.]

The above document has been registered in regard to the property designated with letter "F" at folio 137 bis, Volume 3, Book 2, Malate Section, property No. 93, duplicate, Fifth Inscription. Manila, April 28, 1906.

[Seal Registry of Titles, City of Manila, P. I.]

(Sgd.)

CLAUDIO GABRIEL.

225

8519.

EXHIBIT "C."

Know all by these presents, that we, Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of "Aldecoa y Cia.", of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31, 1896, and modified by another instrument dated February 20, 1898, executed and ratified before the same Notary Sr. Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, the party of the first part; and Mr. A. G. Stephen, merchant, of lawful age, married and resident of this Capital, as agent of the "Hongkong & Shanghai Banking Corporation," established in Manila, the party of the second part.

Make it known:

1. Whereas, by a written public instrument executed before the Notary Public of the province of Albay, Don Lorenzo E. Villareal, on October 11, 1906, Don Salustiano Zubeldia guaranteed Messrs. Aldecoa and Company of this City, the payment of the balance owed by him to this firm, which document literally copied is as follows:

"Know all by these presents: that I, Salustiano Zubeldia, Spaniard, married to Da. Ignacia Echavarria a merchant of Tabaco, resident of Tabaco, province of Albay, Philippine Islands, hereby states and make-known:—

1. That I acknowledge the balance appearing against me in my

current account with Messrs. Aldecoa and Company in Manila as per statement of account closed on September 30, of the present year 1906.

2. That I work as consignor of said gentlemen and I am bound to deliver them all the hemp gathered by me, to sell it on commission, as per agreement.

3. That in order to guarantee the balance which I mention in the final paragraph, I mortgage expressly and specifically my real estate, personal property and credits against those persons who buy hemp from me and who are solvent, all of which are described as follows:—

(a) A store with press and walls of masonry and galvanized iron, and roof of galvanized iron, its area being 1367.51 square meters, its value being	P38,380.93
(b) A house of strong materials with galvanized iron roofs and masonry walls, its cost being	" 17,901.04
(c) A lot where the two foregoing <i>promises</i> are situated, bounded on the N. by calle Quinali and by lot of the heirs of Ceferino Aramburu; on the E. by the same heirs and Mariano Villanueva; on the S. by Mariano Villanueva and Manuel Zalvidea; and on the W. by Modesto Borromeo and by calle Quinali, the area of the same measuring 2501.49 square meters and its purchase value being	" 2,000.00
(d) On said lot and on the other side of calle Quinali there is a stone camarine for the deposit of salt and kerosine, the cost of which is	" 1,035.23
(e) Merchandise:	
275 bales with 550 piculs of hemp of the approximate value of	" 10,450.00
30,000 rattan rope for packing	" 120.00
10,500 packing mats	" 420.00
690 sac-s of Saigon rice	" 4,097.63
4 cases of La Rosa cigarettes of 3,000 cts.	" 151.67
1 case " " " " " 3,300 cts.	" 151.67
190 sac-s of salt	" 101.37
90 cases of kerosine Dragon brand	" 307.80
50 piculs hemp, loose	" 925.00
Merchandise consisting in hemp and other articles of immediate sale in the Agency of Bacacay	" 700.00
id. id. id. Agency of Tiui	" 4,000.00
2 large cascos for loading and unloading cargo, actual value	" 1,600.00
The barge San Jose, its value	" 2,000.00

Solvent debtors or hemp purchasers who have,
most of them, their property mortgaged:

Chinaman Go Tiango	"	4,826.05
Maximino Chaves	"	692.44
Dionisio Templado	"	9,063.42
Vicente Belmonte	"	1,199.84
Diego Palomo	"	331.60
Chinaman Conga	"	1,589.94
Chinaman Ang Tungee	"	600.00
Pedro Bargas	"	5,869.75
Chinaman Sy Quingco	"	16,836.23
Emigdio Matias	"	19,136.07
Manuel Gonzalez	"	909.22
Ramon Morales	"	5,348.87
Sabina de Santillan	"	1,649.32
Venancio Canofin	"	499.80
Mariano Agunday	"	274.00
Sixto Almonte	"	575.45
Pablo Belen	"	826.13
Pedro Almonte	"	904.00
Jose Asi	"	284.45
229 Jorge Salchen	P	471.00
Chinaman Antua	"	270.73
Simeon Riosa	"	197.00
Alejandro Quitasol	"	580.62
Felipe Coetesano	"	173.95
Paulino Matias	"	438.79
Pablo Escarella	"	2,940.92
Chinaman Uy Angco	"	1,466.57
" Dy Cuico	"	484.27
Balbino Belarmino	"	450.00
Perfecto Murillo	"	986.25
Chinaman Uy Baico	"	1,894.38
Carlos Lama	"	537.00
Vicente Colingo	"	616.38
Laureano Berces	"	6,009.56
Chinaman Go Paco	"	139.00
" Dy Picco	"	831.30
Casimiro Conejero	"	1,385.82
Toribio Cabiles	"	700.00
Anselmo Bonagua	"	573.25
Chinaman Chua Fiangco	"	253.13
Maria Matias	"	173.94

P177,769.95

4. That the titles of the above described property are in the Registry of Property of this province of Albay, Philippine Islands, for the registration thereof and as soon as the same are returned to me, I shall send them to Aldecoa and Company in Manila for the purposes of this my deed.

230 5. That the said property is free from all charges or encumbrances.

6. And last. That I guarantee the solvency of my hemp buyers mentioned in this document.

In witness whereof, I sign these presents in Tabaco, this tenth day of October, nineteen hundred and six,

(Sgd.)

SALUSTIANO ZUBELDIA.

Signed in the presence of:

(Sgd.) SERAPIO ECHEVARRIA.

(Sgd.) RAFAEL BANIJES.

UNITED STATES OF AMERICA,

Philippine Islands, Province of Albay:

In the Municipality of Tabaco in the said province, this eleventh day of October, nineteen hundred and six, A. D., I, the Notary Public of this Municipality Don Lorenzo E. Villareal, having been invited to the residence of Don Salustiano Zubeldia, said Salustiano Zubeldia personally appeared before me and I certify to know him to be the person who executed the above instrument and ratified the same to be an act of his own free will and deed. He exhibited to me his cedula No. 833,020 issued by the Municipal Treasurer of Tabaco on the 19th day of January, 1906. In witness whereof, I place my official seal and signature on the date above mentioned.

[HIS NOTARIAL SEAL.]

(Sgd.)

LORENZO E. VILLAREAL,

Notary Public until December 31, 1907.

The property described which in the foregoing deed is marked with the letters (a), (b), (c) and (d), is described as one single piece of property as follows:

Property situated in Quinali street of the town of Tabaco, province of Albay, Philippine Islands. It is bounded on the North by Quinali street and by a lot of the heirs of Don Ceferino Aramburu; on the East by the same heirs and Mariano Villanueva; on the South by Mariano Villanueva and Don Fausto Ormachea; and on the West by Modesto Borromeo and by Quinali street. The point

marked — in the plan has been taken as reference point,

231 being the intersection of Calle San Juan or Rizal and the

N. W. angle of Calle Quinali. From this point in a South-

westerly direction 22 grades 0' W., and along a line 23.50 meters

long the line — 1, it reaches the point marked with the first

No. 1 of the plan; from point 1 in a Southwesterly direction

the line 1.2, it reaches point 2, on a course 38 grades

30' W., being 52.20 meters long; from point 2 the line

2.3, follows a Southwesterly direction on a course 35 gds.

00' E., 54.50 meters long; from point 3 starts line 3.-4, on a South-

westerly direction on a course of 62 gds. 00' E., 64.60 meters long;

from point 4 starts line 4.-1, in a Northwesterly direction on a course

45 gds. 00' W., 78.00 meters long; and closes the poligone. The superficial area inclosed within poligones 1, 2, 3, and 4 measure 3,869 square meters distributed as follows: Press, camarine and hemp deposit 1,367.51 square meters and the rest, that is to say, the lot, 2,501.49 square meters. The property is composed of a building land bounded on the East by a bamboo fence and on the North by a piece of masonry wall belonging to the adjoining owner Mr. Aramburu; the rest, that is to say, the greater part of the land lacking of any kind of enclosure. Within the lot a one-floor camarine of strong materials has been built consisting of one single body and a small abutting part, measuring: the main body 46.70 meters long by 29.30 meters wide; and the abutting part 5.40 meters long by 1.90 meters wide. It has one single floor; the walls being of masonry up to a height of 1.50 meters, except the part destined to office where all the wall is of masonry; the rest of the same as well as the roof being of galvanized iron. On the front, that is to say, on its North side it has a shed along the front being 4.60 meters wide; and another on the East side of the same being 4.50 meters wide and 39.00 meters long, which does not run all along the East side but only reaches up to the abutting part of the building which is devoted to the offices. It has two doors on the front and 4 on the East, all of them opening on the lot under the sheds, being unnumbered. Its construction is solid and of the current style in the locality, for this kind of buildings.

II. Whereas by an instrument executed in this City, before the Notary Public of the same, Don Jose Ma. Rosado on February 23, 1906, the Hongkong & Shanghai Banking Corporation declared to have and keep open in favor of the firm of Aldecoa and Company of this city, a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000.00) Philippine currency under the terms and conditions and the guaranties contained in said instrument and in another one additional to the latter, executed on March 26, 1906, before the same Notary Mr. Rosado.

III. Whereas, the contracting parties herein have agreed to amplify the security contained in the above mentioned instruments dated February 23, and March 23, 1906, with the mortgage of rights of mortgage executed in its favor on the properties described in this document under letters (a), (b), and (d), which are described as one single property in the manner hereinbefore done.

Therefore, the contracting parties herein stipulate, agree and covenant as follows:

That the credit in current account which the Hongkong & Shanghai Banking Corporation has granted to the firm of Aldecoa & Company for the sum of four hundred and seventy-five thousand pesos (P475,000.00) under the terms contained in the instruments dated February 23 and March 23, 1906, and whatever other amount that said Banking establishment may have granted to Messrs. Aldecoa & Company on said current account, exceeding the said amount of four hundred and seventy-five thousand pesos (P475,000.00) Philippine currency, is furthermore secured with the special voluntary mortgage which the firm of Aldecoa & Company executes on its right of

mortgage on the property marked with letters (a), (b), (c), and (d), which is mentioned in the document hereinbefore transcribed dated October 11, 1906; it being understood that when Don Salustiano Zubeldia should register his right of title to the property mortgaged to Aldecoa & Company, this firm shall then register its mortgage and shall also register the mortgage on said mortgage executed by virtue of this document; it being also understood that Messrs. Aldecoa and Company shall file with the Court of Land Registration of these Islands and in the record of the petition of said Don Salustiano Zubeldia for the registration of said property the

234 mortgage deed executed in its favor and also this document. All the expenses caused by the execution of this mortgage deed and the filing thereof in the Court of Land Registration and its registration in the Registry of Property, shall be paid by the firm of Aldecoa & Company.

In witness whereof, we sign the present document in duplicate, in Manila this 22nd day of December, 1906.

(Sgd.) ALDECOA & COMPANY.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.) A. STEPHEN.

Signed in the presence of:

(Sgd.) ANTONIO HIDALGO.

(Sgd.) JOSÉ MORENO LACALLE.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila, this 22nd day of December, 1906; before me personally appeared Mr. Alexander Macleod and Mr. A. G. Stephen, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. Stephen exhibited to me his certificate of cedula No. A-1,515,678, issued by the Collector of Internal Revenue of this City, on April 7, 1906; Mr. Macleod not having done so on account of being exempt from the same being over 60 years of age.

235 In witness whereof I have hereunto set my name and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

JOSE MA. ROSADO,
Notary Public.

My commission expires on December 31, 1906.

The above document has been filed at 9:00 a. m. on this date at folio 232 of Volume V of the Diary, Entry No. 223, Albay, Albay, P. I., May 20, 1907. Fees 0.75 cents. No. 1 of the Schedule.

(Sgd.)

CLARENCE McDONALD.

The registration of the property to which the foregoing refers has been suspended for the correctible defects of said property not being

registered in the name of any person and of not expressing the limit of the amount secured by each one of the pieces of property in accordance with Sections 20 and 124 of the Mortgage Law, and in the meantime preventive notation has been made at pages 226, 228, 232 of Volume III, of the Municipality of Tabaco, properties Nos. 595, 596, 597 and 598 Entry letter A rectified by letters B, A, A and A, respectively. Albay, Albay, P. I., May 28, 1907. Fees P51.55.
(Sgd.)

CLARENCE McDONALD,
*Provincial Treasurer and Acting
Registrar of Property, Albay, P. I.*

236 The above document has again been presented at 10:00 a. m. of the 22nd day of July, 1907, folio 242 bis, of Volume V of the Diary Entry No. 248.

The term of the preventive notations to which the preceding notes refer dated May 28th last at folios 227 bis, 228 bis, 230 bis and 232 bis of Volume III of Book of Tabaco properties Nos. 595, 596, 597, and 598, entries letters C, B, B and B respectively, has been extended for 180 days in accordance with the order issued by the Court of Land Registration of the Philippine Islands, dated July 11, 1907, in the Government record No. 10.

Albay, Albay, P. I., July 29, 1907.

(Sgd.)

CLARENCE McDONALD,
*Provincial Treasurer and Acting
Registrar of Property, Albay, P. I.*

Fees P52.30 Philippine currency, Nos. 1 and 7 of the Schedule.

On the margin of the first sheet of this document there are 14 Revenue stamps of P0.50 each and 5 of P0.20 each; in the second sheet there are 10 Revenue stamps of P0.20 each and in the third sheet there is 1 Revenue stamp of P10.00, another of P3.00, 6 of P1.00 and 1 of P0.50.

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8519.

EXHIBIT "D."

Know All by These Presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of this City, as liquidator of the firm of Aldecoa & Company, of this City, now in liquidation, on account of the expiration of the term of said partnership, by virtue of an appointment made in my favor and which is registered in the Mercantile Registry of this City at folio 107 Registry 12 of Volume XVI of the Book of Companies; and Mr. A. G. Stephen, merchant, of lawful age, married and resident of this City, on behalf of the Hongkong & Shanghai Banking Corporation of which I am Manager and Director in Manila, Philippine Islands, hereby make know:-

Whereas by an instrument ratified and signed in this City before the Notary Public of the same Don Jose Ma. Rosado on February 23, 1906, the Hongkong & Shanghai Banking Corporation and Aldecoa

& Company entered into an agreement by which the former binds itself to keep open in favor of the latter a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000.00) Philippine currency subject to the conditions and securities which are prescribed more in detail in the document referred to.

Whereas, at a later date the contracting parties herein also agreed that if certain shares of the Pasay Estate Company were declared to be the property of Aldecoa & Company in liquidation, said 238 shares would be given by the debtor Company to the creditor Company as a further guarantee.

Whereas the said shares of the Pasay Estate Company Limited have become the property of said Aldecoa & Company in liquidation.

Therefore the contracting parties herein stipulate and agree as follows:

(a) Aldecoa & Company in liquidation, represented by its liquidator William Urquhart, as mortgagor, by these presents transfer and mortgages to the Hongkong & Shanghai Banking Corporation the mortgagee, the shares of the Pasay Estate Company Limited which are hereby delivered to said mortgagee for the custody and preservation thereof, said shares of the Pasay Estate Company Limited being described in detail as follows:

Certificate No. 65, ten shares Nos. 663 to 642.

"	"	66	"	"	"	643	"	652.
"	"	67	"	"	"	653	"	662.
"	"	68	"	"	"	663	"	672.
"	"	69	"	"	"	673	"	682.
"	"	70	"	"	"	682	"	692.
"	"	71	"	"	"	693	"	702.
"	"	72	"	"	"	703	"	712.
"	"	73	"	"	"	713	"	722.
"	"	74	"	"	"	723	"	732.
"	"	75	"	"	"	733	"	742.
"	"	76	"	"	"	743	"	752.
"	"	77	"	"	"	753	"	762.
"	"	78	"	"	"	763	"	772.

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Certificate No. 79 ten shares Nos. 773 to 782.

"	"	80	"	"	"	783	"	792.
"	"	81	"	"	"	793	"	802.
"	"	82	"	"	"	803	"	812.
"	"	83	"	"	"	813	"	822.
"	"	84	"	"	"	823	"	832.
"	"	85	"	"	"	833	"	842.
"	"	86	"	"	"	843	"	852.
"	"	87	"	"	"	853	"	862.
"	"	88	"	"	"	863	"	872.
"	"	89	"	"	"	873	"	882.
"	"	90	"	"	"	883	"	892.
"	"	91	"	"	"	893	"	902.
"	"	92	"	"	"	903	"	912.

Certificate No. 93	ten shares	Nos. 913 to 922.
" " 94	" "	" 923 " 932.
" " 95	" "	" 933 " 942.
" " 96	" "	" 943 " 952.
" " 97	two	" 953 " 954.

(b) This mortgage is executed as additional security for the payment to the said Hongkong & Shanghai Banking Corporation, the mortgagee, of the amount for which Aldecoa & Company, the mortgagor, may be indebted to it by reason of the credit in current account which is mentioned in the first paragraph of this document and of whatever other amounts which said mortgagor may owe to the said mortgagee in the future.

240 (c) The mortgagee is hereby authorized to collect and receive from the Pasay Estate Company Limited all dividends, bonuses, or any other distribution of capital and profits which said Company may distribute on account of the said shares hereby mortgaged, issuing the corresponding receipts and acknowledgments of payment for the amounts so received and applying the amounts so collected by the mortgagee to the partial payment (that is to say, as far as they may reach) of the account of the mortgagor Aldecoa & Company in liquidation, until the final liquidation of said debt, and if there should be any excess, this excess shall then be paid to said, Aldecoa & Company in liquidation.

(d) The conditions of this obligation are: if the mortgagor, its heirs or successors, executors or administrators, should pay to the mortgagee the whole amount owed or which may be owed by them, this obligation shall be null and void.

(e) Aldecoa & Company in liquidation reserves to itself the right to sell the shares of the Pasay Estate Company Limited above mentioned, provided that on making the sale, the purchaser shall deposit into the Bank the whole amount of purchase price; it being understood that the price so paid by the purchaser shall be applied to the reduction of the debt of Aldecoa & Company, said shares being released in that case from all incumbrance.

(f) The Hongkong & Shanghai Banking Corporation acknowledges to have received the shares hereby mortgaged, to keep and preserve them in its possession as above said.

(g) This instrument is and shall be considered as additional to each and every one of the documents executed by reason of the debt of Aldecoa & Company by and between said firm of
241 Aldecoa & Company and the Hongkong & Shanghai Banking Corporation all of which documents are hereby declared to remain in full force and effect.

Done in the City of Manila, Philippine Islands, this 30th day of August 1907.

For the Hongkong & Shanghai Banking Corporation,
(Sgd.) A. STEPHEN.

For Aldecoa & Company, in Liquidation,
(Sgd.) WM. URQUHART.

Signed in the presence of:

_____.

We severally swear that the foregoing mortgage is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and the same is a just and valid obligation and one not entered into for the purpose of fraud.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.)

A. STEPHEN.

For Aldecoa & Co., in Liquidation,

(Sgd.)

WM. URQUHART.

242 UNITED STATES OF AMERICA,
City of Manila, Island of Luzon,
Philippine Islands, ss:

In the City of Manila on the 30th day of August 1907, A. D., personally appeared Messrs. William Urquhart and Alexander Stephen, the parties who signed the foregoing affidavit as to the facts therein consigned and made oath to the truth thereof before me. Said gentlemen exhibited their respective certificates of cedula No. A-1,488,6P3 and A-1,479,705, issued in Manila the 8th day of February and 18th of January 1907.

In witness whereof, I have hereunto set my name and affixed my official seal the date, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

243

8519.

EXHIBIT "E."

Know all by these presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of the City of Manila, as liquidator of the firm of Aldecoa & Company of this City, duly authorized and appointed for such office by the members of said firm as per resolutions taken on January 2nd and 24th, 1907, duly registered at sheets No. one hundred and fifty-six (156) quadruplicate, folio 107 and over of Volume sixteenth of the Book of Companies of the Mercantile Registry of Manila; and Mr. Alexander Gordon Stephen, of lawful age, married and resident of this City, as Manager and legal representative in this City of the corporation known as the Hongkong & Shanghai Banking Corporation by virtue of the letters of Attorney conferred to me in a public instrument executed on February fourteenth (14) of the year 1894, before the Notary Public of the British Colony of Hongkong Mr. G. C. C. Master, which has been duly registered in the Mercantile Registry of the City of Manila at sheet No. ten (10) triplicate, folio 56 of Volume VII of the Book of Companies, hereby declare and make it known:

Whereas Don Andres Garchitorena y Medina by virtue of a public instrument executed on the 11th day of December 1903, before

the Notary Public of Manila Don Jose Ma. Rosado y Calvo,
244 guarantee to the firm of Aldecoa & Company of this City
the balance owed by him to this Company, which document
literally copied is as follows:

'Know all by these presents: That we, Don Andres Garchitorena y Medina, merchant, of lawful age, married to Doña Carmen Ortiz, domiciled in the Province of Ambos Camarines, and accidentally residing in this City, the party of the first part; and Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa & Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Sr. Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, the party of the second part, by this document state and agree as follows:

"1. That by an instrument No. 682 executed in this City before the Notary Public of the same Don Jose Ma. Rosado on the 29th of September 1900, Don Andres Garchitorena y Medina declared and confessed to be in debt to the firm of Aldecoa & Company
245 in the sum of eleven thousand three hundred and nineteen pesos and twenty-six centavos (P11,319.26) which he had received from the same as a loan, in Mexican money counted to his entire satisfaction; binding himself to pay en comandita with Messrs. Tremoya Hermanos as well as with those which may correspond him as sole and exclusive owner; binding himself from this moment to do whatever might be necessary to carry into effect the payment referred to, which was accepted by the firm of Aldecoa & Company through its representative Don Sixto Jesus Alvarez Perez, who in the same document and in the capacity in which he appears, granted and opened a credit in current account without a fixed term and independent from the debt above referred to, in favor of the same Don Andres Garchitorena and only up to the sum of twenty thousand pesos (P20,000.00) Mexican currency and under the other conditions specified in said instrument, and guaranteeing the credit granted by virtue of the same as well as whatever obligations which Don Andres Garchitorena contracted by virtue of the special voluntary mortgage which he executed in favor of the firm of Aldecoa & Company on the right of property which he has on the following property, to-wit:

A. Rural property, consisting of a land destined to pasture near the Visitas of Cibgon, Taytay and Pamboan in the province of Ambos Camarines, it is bounded on the North by lands of Don Eulogio Fernandez; on the East by the sea; and marshes of the

State; on the South by pasture lands of Don Mariano Villamor and the river called Taytay which flows into the Visitas of 246 Pamboan; and on the West by Port Sisiran, measuring nine hundred and fifty-four hectares.

B. Another rural property, consisting of a land situated in the place designated as "Salvacion de la Visita de Hignaroy" of the town of Tigaon in the province of Ambos Camarines, the area of which measures 607 hectares 26 acres of which 486 hectares and 79 ares are in part cogon bushes and in part hemp plantations, and 124 hectares and 47 ares are cogon bushes, its boundaries being as follows: on the North, woods of the State, hemp plantations of Don Paciano Badirian, Don Luis Jallores, the creek of Tinangay and creek of Talanquiso; on the South, river Osini, the confluence of river Daso and Osini and the said river Saso; on the East river Cigaren and land of Don Juan Filipino, and on the west, land of Pedro Barrubia and said river Osini. This property is registered at folios 16 and 8, book 1st. and 1st. of the towns of Caramoan and Tigaon respectively, appearing at folios 30 bis and 25 bis, 247 to 248, Second inscriptions, in the Registry of Property of Camarines Sur.

"2. That by a public instrument No. 99 executed in this City before the same Notary Mr. Rosado, the firm of Aldecoa 247 & Company on February 8, 1901, granted and opened a new credit in current account up to the sum of twenty thousand pesos (P20,000.00) as an extension of that which is mentioned in the preceding paragraph and independent from the debt of eleven thousand three hundred and nineteen pesos and twenty-six centavos (P11,319.26) which in the same mention is made of, in favor of the said Don Andres Garchitorena and under the basis and conditions stipulated and set forth in said instrument, guaranteeing said credit with the special voluntary mortgage on the following property:

C. Rural property, consisting of a parcel of land on which there are built a house of mixed materials of timber and stone with nipa roofs destined to living quarters and a camarine also of mixed materials of timber, stone, mortar, iron and nipa destined to store house or deposit of products within which there is a hemp press: it is situated in the town of Sognay of the province of Ambos Camarines, and is bounded on the North and East, on which side it measures approximately 73 meters, by the road of the visita of Nato which runs along the sea; on the South, at which side it measures 40 meters approximately, by the road which leads to the town of Sagnar and on the West and North, on which sides it measures 70 meters 248 and 25 meters approximately, by a creek without name and the lot of Manuel Valencia; the house measures 12 meters in front by 11 meters deep and the camarine 30 meters front and 12 meters deep.

"3. That I, Andres Garchitorena y Medina as a result of what is stipulated by me with Messrs. Aldecoa & Company according to the documents mentioned in the preceding paragraphs, on this date I owe to said gentlemen the sum of sixty-one thousand nine hundred and fifteen pesos and seven centavos (P61,915.07) and in order that

it may appear in an indisputable manner, I execute this document by virtue of which most solemnly state: that I am indebted to the firm of Aldecoa & Company, of this City, in the total sum of sixty-one thousand nine hundred and fifteen pesos and seven centavos (P61,915.07) which I have received from the same in cash, counted to my entire satisfaction; for which reason I execute in their favor the acknowledgment of having received said sum in the most firm and valid manner which may be convenient to their rights and security.

"4. That said amount of sixty-one thousand nine hundred and fifteen pesos and seven cents (P61,915.07) Mexican currency, shall earn a reciprocal interest of six per cent per annum, beginning from this date, to be settled at the end of every quarter.

"5. I, Don Andres Garchitorena y Medina, bind myself to pay to the firm of Aldecoa & Company the sum of sixty-one thousand nine hundred and fifteen pesos and seven cents (P61,915.07) which I owe the same at the following rate and in the following manner:

(a) Ten thousand pesos on March 30, 1904;

(b) And the balance of fifty-one thousand nine hundred and fifteen pesos and seven cents by partial instalments of five thousand pesos each to be paid at the end of every quarter from the date of the payment of the ten thousand pesos referred to in the above paragraph, with the exception of the last instalment which shall be for six thousand nine hundred and fifteen pesos and seven cents.

"6. Failure to pay one instalment shall give a right to the creditor to consider the rest of the instalments due and payable and, therefore, it shall, from that date, have a right to demand from me, Andres Garchitorena, the total sum of what I may owe at the time when I shall fail to comply with my obligation.

"7. Whatever obligations I, Andres Garchitorena, have contracted by reason of the documents or instruments above referred to, shall remain in force in every part thereof, while this debt may exist.

"8. That to secure the amount which I now owe and whatever obligations I have contracted, I, Andres Garchitorena, confirm and declare to be in force the special voluntary mortgages which I executed on the different pieces of property hereinbefore described, the property marked with letter "A" being security up to the sum of eighteen thousand pesos (P18,000.00) Mexican currency; that described under letter "B" being security for the sum of twenty-six thousand nine hundred and fifteen pesos and seven cents (P26,915.07) Mexican currency; and that described under letter "C" for the sum of seventeen thousand pesos (P17,000.00) Mexican currency, each one of the said pieces of property being liable, besides, for the sum of three hundred pesos (P300.) Mexican currency for the costs and judicial expenses in case of foreclosure.

"9. That by common agreement with Mr. Alexander S. Macleod, in the capacity in which he appears, I, Andres Garchitorena, fix the value of the mortgaged property as follows: that marked with letter "A" in the sum of twenty thousand pesos (P20,000.00) Mexican currency; that described under letter "B" in the sum of thirty thou-

and pesos (P30,000.00) Mexican currency; and that described under letter "C" in the sum of twenty thousand pesos (P20,000.00) Mexican currency, which value shall be the appraised price for the only auction which in case Don Andres Garchitorena should fail to comply with all or any of his obligations must take place in accordance with the provisions of the existing mortgage law and the procedure established in the same, the general regulations for the execution thereof and the other legal provisions which might be promulgated in the future on the premises, waiving therefore any other valuation of said property and the action which there might be towards this end.

251 "10. I, Don Andres Garchitorena, bind myself to register my right of property and of possession which I have on the property above described, as well as the mortgages which I have executed thereon in the new Registry of the property within the term of six months from this date; it being understood that if I should fail to proceed to said registration, the creditor company shall have the right, at the expiration of the said six months, to demand from me the full amount of my debt as well as the interest thereon.

"11. That I, Don Andres Garchitorena, shall not sell any of the property mortgaged without the knowledge and consent of the creditor company, and even in that case, I shall have to pay to said company as soon as the sale takes place the amount which I may receive as purchase price, in order to pay in part with said amount the sum which I might be owing at the time of the sale.

"12. I, Don Alejandro S. Macleod, in the capacity in which I appear herein, accept this document as to each and every one of its parts.

"13. That we submit ourselves to the jurisdiction of the judges and the Courts of this City for whatever judicial question might arise by reason of the non-compliance of our obligations, waiving therefore expressly the forum of our respective domicile.

"In witness whereof, we sign the present document in Manila, in triplicate, this 11th day of December, 1903.

(Sgd.)

ANDRES GARCHITORENA.

(Sgd.)

ALDECOA & COMPANY.

Signed in the presence of:

(Sgd.) POT. VILL. BERNABE.

(Sgd.) V. A. MASALAC.

UNITED STATES OF AMERICA,

City of Manila,

Island of Luzon, Philippine Islands:

In the City of Manila, this 11th day of December, 1903, before me appeared Don Andres Garchitorena y Medina and Mr. Alexander S. Macleod, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. Andres Garchitorena exhibited his certificate of cedula No. 126077 issued in Nueva Caceres on April 3rd,

1903, Mr. Alexander S. Macleod not exhibiting any for reason of being exempt from said certificate being as he is over fifty-five years old.

In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

LDO. JOSE MA. ROSADO Y CALVO,

Notary Public.

My commission expires on January 1, 1905.

Whereas, said Don Andres Garchitorena y Medina still owes the firm of Aldecoa & Company the sum of twenty thousand two hundred and eighty-two pesos and nineteen centavos (P20,282.19) Philippine currency, being the balance of the debt acknowledged in the foregoing instrument;

Whereas, the mortgages executed in favor of the creditor in the above said instrument of December 11, 1903, are still in force with the exception of that on the property described under letter "C" which was at a later date acquired by the same firm of Aldecoa & Company;

Whereas, both debtor and the creditor, on February 23, 1907, agreed to modify the liability fixed for the premises described under letters "A" and "B," distributing between them the said remainder or balance of twenty thousand two hundred and eighty-two pesos and nineteen centavos (P20,282.19) Philippine currency, executing the said agreement by a letter which on said date the debtor wrote to the creditor Aldecoa & Company which letter reads literally as follows:

MANILA, February 23, 1907.

Messrs. Aldecoa & Company, in Liquidation.

GENTLEMEN: This is to ask you that the balance of P20,282.19 which still I am indebted to you, be distributed between the property which I have mortgaged to you for the security of the payment of what I owe you, according to the instrument of December 11, 1903, in the following proportion:

The property which in the deed of December 11, 1903, is described under letter "A" shall be liable for the sum of P2,000 principal and interest thereof, and that described under the letter "B" shall be liable for the sum of P18,282.19 principal and corresponding interest.

To this effect I earnestly beg you to please apply the payments I have heretofore made to reduce the mortgage in the proportion hereinbefore stated, so that the balance of P20,282.19 which I actually owe you, be distributed between the mortgaged property in the proportion above indicated.

I remain yours very sincerely,

(Sgd.)

ANDRES GARCHITORENA."

Whereas, by public instrument executed in this City before the Notary Public of the same Don Jose Ma. Rosado on February 23, 1906, the Hongkong & Shanghai Banking Corporation granted to the firm of Aldecoa & Company of this City a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000.00) Philippine currency under the terms and conditions and securities contained in said instrument and in another additional instrument executed on March 23, 1906, before the same Notary Mr. Rosado;

Whereas, the firm of Aldecoa & Company by reason of the credit which was granted to it, by said instrument of February 23, 1906, owes to the Hongkong & Shanghai Banking Corporation at the present time the sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency;

Whereas, the creditor Company desires that new securities be given in addition to those given by the mentioned instruments of February 23, and March 23, 1906, — the contracting parties herein have agreed to enlarge said securities with the mortgage of the real right of mortgage executed in favor of the firm of Aldecoa & Company on the property described under letter- "A" and "B."

Therefore, the parties hereto, stipulate, agree and covenant as follows:

That as additional security for the payment of said sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency, which the firm of Aldecoa & Company in Liquidation owes at present to the Hongkong & Shanghai Banking Corporation, I, William Urquhart in the capacity above stated, by these presents do constitute voluntary special mortgage on the mortgage right which the Company which I represent has on the property described under letters "A" and "B" in the foregoing instrument of December 11, 1903; it being understood that the present mortgage shall depend from the resolution of the prior mortgage; and it being also understood that the mortgage of the real right of mortgage on the property described under letter "A" shall be liable for the sum of two thousand pesos (P2,000.00) Philippine currency principal and interest thereof, and that property described under letter "B" shall be liable for the sum of eighteen thousand two hundred and eighty-two pesos and nineteen centavos (P18,282.10) Philippine currency principal and interest.

All the expenses caused by the execution of this document as well as the expenses for the filing of the same in the Registry of the Property and the registration thereof in the Registry of Deeds, shall be born- exclusively by the firm of Aldecoa & Company.

I, Alexander Gordon Stephen, as Manager and legal representative of the Hongkong & Shanghai Banking Corporation of this City, accept this document in the precise terms in which it is executed.

In witness whereof, we sign these presents in Manila, this 31st day of March, 1907.

ALDECOA & CO., *In Liquidation,*
(Sgd.) By WM. URQUHART.
For the Hongkong & Shanghai Banking Corporation,
(Sgd.) A. G. STEPHEN, *Manager.*

256 Witnesses:
(Sgd.) JOSE MORENO LACALLE.
(Sgd.) JOHN W. HAUSSERMANN.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila:

In the City of Manila, this 13th day of June, 1907, personally appeared before me Mr. William Urquhart on behalf of the firm of Aldecoa & Company in Liquidation, and Mr. Alexander Gordon Stephen as Manager and agent of the Hongkong & Shanghai Banking Corporation of this City, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. William Urquhart exhibited his cedula No. A-1,488,603 issued in Manila on February 8, 1907, and Mr. Stephen exhibited his No. A-1,479,705 issued in Manila on January 18, 1907.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

(P0.20 Internal Revenue stamp.)

The above document has been registered in regard to property marked with letter "B" at folios 249 and 250 bis of Volume VIII Book I of Ticao property No. 608, IV inscription extended; and in regard to property marked with letter "A" at folio 26 bis of
257 Volume XVI of Book I of Caramoan, property No. 11, con-
vised inscription IV, Nueva Caceres, September 3, 1907.

(Sgd.)

JULIAN OCAMPO,
Registrar of Deeds.

A stamp which reads: Registry of Deeds, province of Ambos Camarines, P. I.

8510.

EXHIBIT "F."

Diary No. 6841.

Know all by these presents: That we, William Urquhart, merchant, of lawful age, single and resident of the City of Manila, as Liquidator of the firm of Aldecoa & Company of this City, duly authorized and

appointed for such office by the members of said firm as per resolutions taken on January 2nd and 24th, 1907, duly registered at sheet No. one hundred and fifty-six (156) quadruplicate folio 107 and over, of Volume sixteenth of the Book of Companies of the Mercantile Registry of Manila; and Mr. Alexander Gordon Stephen, of lawful age, married and resident of this City, as Manager and legal representative in this City of the corporation known as the Hongkong & Shanghai Banking Corporation by virtue of the letters of Attorney conferred to me in a public instrument executed on February fourteenth (14) of the year 1894, before the Notary Public of the British Colony of Hongkong Mr. G. C. C. Master, which has been duly registered in the Mercantile Registry of the City of Manila at sheet No. ten (10) triplicate, folio 56 of Volume VII of the Book of Companies; hereby declare and make it known:

Whereas, by a document executed on June 8, 1904, before Don Jose Ma. Rosado y Calvo, Notary Public of the City of Manila, Don Liborio Tremoya, as managing partner with power to sign in the name of the mercantile firm of "Tremoya Hermanos, domiciled in Lagonoy, Province of Camarines, in order to secure the payment of the sum of forty-three thousand one hundred and seventeen pesos and forty centavos (P43,117.40) Philippine currency which said firm of Tremoya Hermanos came to be indebted to the firm of Aldecoa & Company of Manila, as per balance made and taken on May 31, 1904, executed in favor of the firm of Aldecoa & Company a voluntary special mortgage on the following property owned by the firm Tremoya Hermanos:

A. Urban property, composed of a living house of stone on the lower floor and timber on the upper floor, and camarines with hemp press and one store house, all of it built on one parcel of land enclosed within a masonry wall, situated in the town of San Jose, Province of Ambos Camarines, Philippine Islands. The land on which the above described property is built measures 19 ares, its front measuring 50 meters. It is bounded on the North by Milaor Street, on the South by church lands, on the East by the lot of Don Tomas R. Perez and on the West by San Vicente Street. It was purchased from Don Andres Garchitorea. This property was appraised in twenty thousand pesos (P20,000.00) Philippine currency and its liability was fixed in the sum of sixteen thousand nine hundred and seventeen pesos (P16,917.00) Philippine currency, for principal and interest, plus seven hundred pesos (P700.00) Philippine currency for the payment of costs and expenses in case of judicial foreclosure.

Preventive notation made at Vol. 74, pages 237 to 239, property No. 767 extensive notation letter B.

B. Urban property, situated in the town of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of a camarine which measures 7 meters 65 centimeters in depth, being built of masonry and located 60 centimeters from the eastern boundary of

the lot, that is to say, on the side adjoining the lot of Don Quintin Barrameda and 3 meters from the south boundary of the lot, that is to say, calle Milaor; the area of the lot, on which this property is built, measures 8 ares, 68 centares, bounded on the North by the lot of Don Quintin Barrameda and that of the estate of Don Manuel Achondo, on the South by calle Milaor and on the East by the lot of Don Quintin Barrameda and on the West by calle San Vicente. It was purchased from Don Andres Garchitorena. This property was appraised in eight hundred pesos (P800.00) Philippine currency and its liability was fixed in the sum of five hundred pesos (P500.00) Philippine currency principal and interest, plus one hundred pesos (P100.00) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Preventive notation made at Vol. 74 pages 242 and 243 property No. 768 short notation letter B.

260 C. Urban property, situated in the Municipality of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of one kiosk measuring 10 meters in front by 6 meters in depth, being constructed of timber and galvanized iron. The area of the lot of this property measures 38 ares 90 centares, bounded on the North by the lot of the estate of Don Manuel Achondo, on the South by calle Milaor, on the East by calle San Vicente and on the West by the lot of Don Andres Garchitorena. It was purchased from Don Andres Garchitorena. This property was appraised in eight hundred pesos (P800.00) Philippine currency and the liability thereof was fixed in the sum of five hundred pesos (P500.00) principal and interest plus one hundred pesos (P100.00) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 74 pages 246 and 247 property No. 769 concised notation letter B.

D. Urban property, situated in the Visita of Sabang of the Municipality of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of a camarine of masonry and also a house of masonry in the lower floor and timber in the upper floor, covering a space in the lot measuring 99 square meters and 65 square centimeters. The lot measures 1 hectare 25 ares and 80 centares; bounded on the North by the road that leads to San Jose; on the South by the Pacific Ocean; on the East by the lot of Don Andres Garchitorena and on the West by the lot of the estate of Don Manuel Achondo. Part of the same was built and the rest was purchased from Don Andres Garchitorena. This house and lot was appraised in fifteen thousand pesos (P15,000.00) Philippine currency and in the said deed of June 8, 1904, its liability was fixed in the sum of ten thousand pesos and forty centavos (P10,000.40) Philippine currency plus seven hundred pesos (P700.00) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 74 pages 250 and 251 property No. 770, concised notation letter B.

E. A *late* in Tigaon in the town of the same name in the side of Talooon, Province of Ambos Camarines, appraised in twenty thousand pesos (P20,000.00) Philippine currency, its liability being fixed in the above mentioned instrument, in sixteen thousand pesos (P16,000.00) Philippine currency plus five hundred pesos (P500.00) for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 26 and 27, property No. 614, concised notation letter B.

F. All the *lates* which are located in the Visitas of Payatan, La Luz and Pinalabanan, appraised in eight thousand pesos (P8,000.00) Philippine currency, and in said instrument their liability was fixed in five thousand pesos (P5,000.00) plus five hundred pesos (P500.00) Philippine currency in case of litigation.

Notation made at Vol. 75 pages 226 and 227, property No. 683, concised notation letter B.

262 G. House and lot in Tigaon appraised in eight hundred pesos (P800.00) Philippine currency, their liability being fixed in the above named instrument in five hundred pesos (P500.00) plus one hundred pesos (P100) Philippine currency for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 29 to 31, property No. 615 concised notation letter B.

H. House and warehouse of galvanized iron situated in the town of Sanay, Province of Ambos Camarines, appraised in one thousand pesos (P1,000.00) Philippine currency and in said instrument of June 8, 1904, their liability was fixed in eight hundred pesos (P800.00) plus one hundred pesos (P100.00) for costs and expenses in case of litigation.

Notation made at Vol. 38 Book II of Langay, folios 224 bis and 225, property No. 350, concised notation letter B.

I. Three hemp plantations in Buyo in the town of Goa, Province of Ambos Camarines, appraised in seven thousand pesos (P7,000) Philippine currency, their liability being fixed by said instrument in the sum of five thousand pesos (P5,000.00) plus five hundred pesos (P500.00) for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 230 and 231, property No. 684, concised notation letter B.

J. Rice paddies in San Jose de Lagonoy, Province of Ambos Camarines, appraised in nine hundred pesos (P900.00) Philippine currency, their liability being fixed in said instrument in the

263 sum of four hundred pesos (P400.00) Philippine currency plus one hundred pesos (P100.00) for the payment of costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 75 pages 244 and 245, property No. 771, concised notation letter B.

Whereas, in the same instrument of June 8, 1904, above referred to, Don Liborio Tremoya, in his own name and right, in guarantee of his personal debt, which according to the balance made on May 31, 1904, came up to the sum of seventy-three thousand four hundred and sixty-three pesos and fifty-four centavos (P73,463.54) Philippine currency, the acknowledgment of which was set down in said instrument, executed a voluntary special mortgage in favor of the firm of Aldecoa & Company on the following property of his own.

K. Urban property, that is to say, a lot situated in calle Daquitán in the barrio of Tabuco, Municipality of Nueva Caceres, Province of Ambos Camarines, Philippine Islands, measuring 2,115 square meters, bounded on the right of its entrance by Ana Jacobo heir of Feliciano Jacobo, Isidoro Francisco; on the left by a public street without name which leads to the camarine for the loading and unloading of the steamers, on its front by calle Daquitán and on the back by Bonifacia Regalado. Within which lots there is a building constructed with strong materials with a hemp press. The lot

264 was purchased from Don Jose Gallietabeitia, according to an instrument No. 75 executed on September 24, 1901, before the Notary public of Nueva Caceres, Province of Ambos Camarines, Don Roman Flordelisa; the building was built by the owner. Said property is registered in the old Registry of the Property of said Province at Volume II Book I of Nueva Caceres, folio 40 bis, his property No. 12, inscription IV; this property was appraised in forty-five thousand pesos (P45,000.00) Philippine currency and its liability was fixed in forty-four thousand pesos (P44,000.00) Philippine currency principal and interest plus five hundred pesos (P500.00) for costs and expenses in case of litigation.

Registered at Vol. 63 of the Archive which is Book 5 of Nueva Caceres, folios 209 and 209 bis and 210, property No. 12, extensive inscription No. 7.

Whereas, Don Liborio Tremoya of his own right and as Manager of the mercantile firm Tremoya Hermanos bound himself and promised to pay to Aldecoa & Company on account of the two debts above mentioned, the sum of twelve thousand pesos (P12,000.00) per year until both debts were fully paid, the creditor reserving the right to apply these payments to these two debts in the proportion which it might desire or to apply the full sum paid to the partial payment of one of the two debts if the creditor should deem it convenient to do so. It was also agreed that both debts should earn no interest, on

condition that the debtors should comply most strictly with said partial payments and on the contrary said debt should earn an interest at the rate of eight per cent (8%) per annum from the last installment which the debtor should have failed to pay.

265 Whereas, by public instrument executed in this City before the Notary Public of the same Don Jose Ma. Rosado y Calvo on February 23, 1906, the Hongkong & Shanghai Banking Corporation granted the firm of Aldecoa & Company of this City, a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000.00) under the terms and conditions and guaranties contained in said instrument and in another additional one executed on March 23, 1906, before the same Notary Mr. Rosado.

Whereas the firm of Aldecoa & Co. by reason of the credit opened in its favor by virtue of the instrument dated February 23, 1906, is at present indebted to the Hongkong & Shanghai Banking Corporation the sum of four hundred seventy-five thousand five hundred ninety-four 47/100 (P475,594.47) pesos, Philippine Currency.

Whereas, the creditor Company desires that new securities be given in addition to those given by the mentioned instruments of February 23 and March 23, 1906, and the contracting parties herein have agreed to enlarge said securities with the mortgage of the real right of mortgage executed in favor of the firm of Aldecoa & Company on the property described under letters "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K,"

Therefore, the parties hereto stipulate, agree and covenant as follows:

That as additional security for the payment of said sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency which the firm of Aldecoa & Company in Liquidation owes at present to the Hongkong & Shanghai Banking Corporation, I William Urquhart, in the capacity above stated, by these presents do constitute voluntary special mortgage on the mortgage right which the Company which I represent has on the property described under letters "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," in the said instrument of June 8, 1904, it being understood that the present mortgage shall depend from the resolution of the prior mortgages.

The mortgage of the real right of mortgage on each one of the above described properties, shall be liable for the following amount:

266 The right of mortgage corresponding to the property described under letter "A," shall be liable in the sum of sixteen thousand nine hundred and seventeen pesos Philippine currency.....	P16,917.00
That corresponding to the property described under letter "B" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "C" for the sum of five hundred pesos Philippine currency	P500.00

That corresponding to the property described under letter "D" for the sum of ten thousand pesos and forty centavos Philippine currency	P10,000.40
That corresponding to the property described under letter "E" for the sum of sixteen thousand pesos Philippine currency	P16,000.00
That corresponding to the property described under letter "F" for the sum of five thousand pesos Philippine currency	P5,000.00
That corresponding to the property described under letter "G" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "H" for the sum of eight hundred pesos Philippine currency	P800.00
That corresponding to the property described under letter "I" for the sum of five thousand pesos Philippine currency	P5,000.00
267 That corresponding to the property described under letter "J" for the sum of four hundred pesos Philippine currency	P400.00
And that corresponding to the property described under letter "K" for the sum of forty-four thousand five hundred pesos Philippine currency	P44,500.00

Mr. William Urquhart in the capacity above stated states also that none of the mortgage credits referred to in this instrument have been alienated, sold, ceded, or encumbered in any manner.

All the expenses occasioned by the execution of this document as well as for the filing of the same in the Court of Land Registration and registration of the same in the Registry of Deeds and those for the cancellation when the same be made shall be exclusively on the account of the firm of Aldecoa and Company in Liquidation.

I, Alexander Gordon Stephen, as Manager and Agent in this City of the Hongkong and Shanghai Banking Corporation accept this instrument in the precise terms in which it has been executed.

In witness whereof, we sign these presents, in Manila, this 31st day of March 1907.

ALDECOA AND COMPANY,
In Liquidation,

(Sgd.)

By WILLIAM URQUHART.

For the Hongkong and Shanghai Banking Corporation,

(Sgd.)

A. G. STEPHEN, *Manager.*

Witnesses:

(Sgd.) JOSE MORENO LACALLE.

(Sgd.) JOHN W. HAUSERMANN.

268 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila:

In the City of Manila this 13th day of June, 1907, personally appeared before me Mr. William Urquhart on behalf of the firm of Aldecoa & Company in Liquidation, and Mr. Alexander Gordon Stephen as Manager and agent of the Hongkong & Shanghai Banking Corporation of this City, whom I know to be the persons who executed the foregoing document and ratified that the same is their own free and voluntary act and deed. Mr. William Urquhart exhibited his cedula No. A-1,488,603 issued in Manila on February 8, 1907, and Mr. Stephen exhibited his No. A-1,479,705 issued in Manila on January 18, 1907.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

(A P0.20 Internal Revenue Stamp.)

There is another seal which reads as follows: Registry of Deeds—Province of Ambos Camarines—Philippine Islands.

The above document has been registered in regard to property marked with letter "K" at folio and Volume expressed on the margin of said property.

The registration of this document has been suspended in regard to the pieces of property marked with letters "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J," by reason of the defect of there being no registration but only a preventive notation of the right of mortgage constituted on said property in favor of the firm of Aldecoa & Company on which right of mortgage the new encumbrance of a sub-mortgage has been constituted in favor of the Hongkong & Shanghai Banking Corporation. And this defect being susceptible of correction, at the instance of the interest of parties, I have made a preventive notation of the preceding document at the folios
 269 and Volume expressed on the margin of the description of each one of these properties, returning the present document to the interested parties so that within the term of sixty days beginning from this date, they may correct the defect. Nueva Caceres, Ambos Camarines, September 25, 1907.

(Sgd.)

JULIAN OCAMPO,
Registrar of Deeds.

Fees P118.25, Nos 2 and 7 Sch.

An extension from sixty to 180 days has been noted by order of the Court of Land Registration, dated October 22, 1907, in regard to the preventive notation of the properties described in the preceding document at Books, Volumes and folios as follows: Parcel "A" at folios 1, 2 and 3 of Vol. 76, property No. 767 notation letter D; "B" at folios 244, Vol. 74 and 11 of Vol. 76, property No. 768,

notation letter D; "C" at folios 242 and 248 Vol. 74, property No. 769, notation letter D; "D" at folios 252 Vol. 74 and 15 of Vol. 76, property No. 770, notation letter D; "E" at folios 28 Vol. 75 and 19 Vol. 76 property No. 614 notation letter D; "F" at folios 228 Vol. 75 and 23 Vol. 76 property No. 683, notation letter D; "G" at folios 32 and 33 Vol. 75, property No. 615, notation letter D; "H" at folios 225 to 226 Vol. 38, property No. 315, notation letter D; "I" at folios 232 to 233 Vol. 75, property No. 771, notation letter D. Nueva Caceres, January 6, 1908.

(Sgd.)

TOMAS FLORDELISA,
*Acting Provincial Fiscal, Registrar
of Deeds, Ambos Camarines.*

There is a seal which reads: Registry of Deeds—Province of Ambos Camarines—Philippine Islands.

Fees P80.55 No. 2 and 7 Sch.

270

8519.

EXHIBIT "G."

Agreement.

Whereas, on the 23rd day of February, 1906, Aldecoa and Company, a co-partnership duly registered in the Mercantile Registry of the City of Manila, and the Hongkong and Shanghai Banking Corporation, a corporation duly organized under the laws of Great Britain, and registered in the City of Manila, made and executed a certain escritura, a copy of which is hereto attached; and

Whereas, by the terms of said escritura the Hongkong & Shanghai Banking Corporation opened a credit in favor of said Aldecoa & Co. to the extent of P475,000.00 under the terms and conditions therein mentioned; and

Whereas, by the terms of said agreement said Aldecoa & Co. were authorized to draw checks on said credit solely for the purpose of obtaining funds to be used for the purchase of hemp, rice and other products of the Philippine Islands; and

Whereas, Aldecoa & Co., from time to time since the 23rd day of February, 1906, utilized said credit by obtaining funds, part of which funds were delivered and advanced to the various dealers in produce in the provinces of the Philippine Islands to be used by said dealers for the purpose of buying hemp and other products of the

Philippine Islands to be consigned to the said Aldecoa & Co.
271 for sale on account of said dealers; and and that said moneys were received by said dealers for the purpose of purchasing in the provinces hemp and other products of the Philippine Islands, to be shipped and consigned to said Aldecoa & Co., for and on account of said dealers; and

Whereas, by paragraph 5 of said escritura hereto attached, marked "A," the said Aldecoa & Co. obligated and bound itself to deliver to the Hongkong & Shanghai Banking Corporation the proceeds of

the sales of said hemp and other products of the Philippine Islands so shipped and consigned to said Aldecoa & Co. by said dealers and consignors of said Aldecoa & Co., which proceeds were to be applied in partial payment of the indebtedness of said Aldecoa & Co. to the said Bank; and

272 Whereas, on the 30th day of November, 1906, the debit balance of Aldecoa & Co. at said Bank, created under and by virtue of said escritura dated February 23, 1906, amounted to P515,-519.54; and

Whereas, on said 30th day of November, 1906, as additional security for the payment of said debit balance of said Aldecoa & Co. the said Aldecoa & Co. hypothecated to said Hongkong & Shanghai Banking Corporation the debts owing to Aldecoa & Co. by its provincial debtors, which said debt amounted in the aggregate to P522,-600.00 and were to be liquidated by the respective provincial debtors by shipping and consigning to said Aldecoa & Co. hemp of the value of the respective amounts due from said debtors; and

Whereas, the overdraft of Aldecoa & Co., created under and by the terms of said escritura, marked "A," on the 31st day of December, 1906, amounted to P516,517.98; and

Whereas, on the 31st day of December, 1906, the balance due and owing said Aldecoa & Co. by its provincial debtors so hypothecated to said Bank amounted in the aggregate to the sum of P538,976.80 the names of which provincial debtors and the respective amounts owing by each are as follows:

Martin de Achaval.....	P 22,855.26
Salustiano Zubeldia	"121,709.53
Viuda e Hijos de F. Escaño.....	" 68,511.54
Francisco Rodriguez	" 9,700.51
273 Carranceja y Portilla.....	" 6,835.24
Manuel Veloso	"129,748.65
Acordagoicoechea Hermanos	" 91,188.39
Miguel Pelaez	" 88,427.68
	<hr/>
	"538,976.80

Whereas, the above named debtors were duly notified of said hypothecation; and

Whereas, said Aldecoa & Co. was unable to reduce said overdraft on said 31st day of December, 1906, to the sum of P425,000.00 as provided in said escritura marked "A;" and

Whereas, said Aldecoa & Co on the 31st day of December, 1906, was declared in liquidation, and W. Urquhart, was duly elected as the liquidator of said Aldecoa & Co.; and

Whereas, since the 31st day of December, 1906, the above named debtors have ceased to ship and consign hemp to said Aldecoa & Co. or the liquidator thereof; and

Whereas, by said cessation of shipments and consignments of hemp and products by said debtors to said Aldecoa & Co., or its liquidator, they, the said provincial debtors, and each of them, be-

came obligated to pay in cash to said Aldecoa & Co., in liquidation, the sums due and owing said Aldecoa & Co.; and

Whereas, it is the duty of said liquidator to collect from said debtors the various sums due and owing said Aldecoa & Co.,

274 Whereas, under and by virtue of paragraph 8 of said escritura hereto attached, marked "A," the said sums collected from the said provincial debtors are to be paid to the Hongkong & Shanghai Banking Corporation to be applied by said Bank to the credit of said Aldecoa & Co. in partial payment of the overdraft of said Aldecoa & Co. according to the terms of said escritura;

Now, Therefore, for the purpose of carrying into effect the terms of said escritura, and to make effective the hypothecation executed by said Aldecoa & Co. on the 30th day of November, 1906, the said William Urquhart, the duly authorized liquidator of Aldecoa & Co., does hereby assign to said Hongkong & Shanghai Banking Corporation all the debts due and owing to said Aldecoa & Co. by its provincial debtors as follows:

Martin de Achaval.....	P 22,855.26
Salustiano Zubeldia	" 121,709.53
Viuda e Hijos de F. Escano.....	" 68,511.54
Francisco Rodriguez	" 9,700.51
Carranceja y Portilla.....	" 6,835.24
Manuel Veloso	" 129,748.66
Acordagoicoechea Hermanos	" 91,188.39
Miguel Pelaez	" 88,427.68
	<hr/>
	" 538,976.80

That said assignment of said above named debts is made to the said Hongkong & Shanghai Banking Corporation for the purpose of collection, with the obligation on the part of said Hongkong &

Shanghai Banking Corporation to apply the net proceeds of
275 said collections to the credit of said Aldecoa & Co. to the said Hongkong & Shanghai Banking Corporation according to the terms of the escritura hereto attached, marked "A."

For the purpose of carrying into effect said assignment, the said W. Urquhart, of the City of Manila, Philippine Islands, the duly elected liquidator of Aldecoa & Co., hereby makes, constitutes and appoints A. G. Stephen, Acting Manager of the Hongkong & Shanghai Banking Corporation, my true and lawful attorney in fact, for me and in my name, place and stead, and to my use as liquidator of Aldecoa & Co., to ask, demand, sue for and receipt for all sums of money, debts and demands whatsoever, which are or shall be due, owing and belonging to Aldecoa & Co., or its successors and assigns, or detained from Aldecoa & Co. or me as the liquidator thereof, by each of the above named provincial debtors of Aldecoa & Co., or his or its legal representatives, successors or assigns; giving unto my said attorney full power to do everything whatsoever requisite and necessary to be done in the premises as fully as Aldecoa & Co., or I as the liquidator thereof, could if personally

present, with full power of substitution; hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue thereof.

It is understood and agreed by and between the said W. Urquhart, as the liquidator of Aldecoa & Co., and the Hongkong & Shanghai Banking Corporation that the actual and necessary expenses incurred in the collection of said debts, including attorney's fees, which
 276 fees shall not exceed 10% of the amount recorded, shall be for the account of Aldecoa & Co., and that the net proceeds of such collections, after deducting all expenses of such collections, shall be paid to the Hongkong & Shanghai Banking Corporation and applied on the indebtedness of said Aldecoa & Co. to said bank.

It is further understood and agreed by and between the parties hereto that nothing herein contained shall in any wise be construed to alter the terms of said escritura or to release Aldecoa & Co., its sureties, or either of them, from any of the obligations incurred under and by virtue of said escritura, marked "A," and made a part hereof, and that the only purpose of this agreement is to make effective the obligations assumed by said Aldecoa & Co. to pay over to said Bank, to be applied to the indebtedness of said firm of Aldecoa & Co. to said Bank, the debts due said Aldecoa & Co. from its provincial debtors, when collected, as provided in said escritura hereto attached, marked "A," and the hypothecation executed on said 30th day of November, 1906, and to give unto the Agent of said Bank full power to collect said debts and apply the proceeds thereof to the liquidation of the overdraft of said Aldecoa & Co.

In witness whereof, we have hereunto set our hands and seals this thirtieth day of January, 1907.

ALDECOA & COMPANY,

In Liquidation,

(Sgd.) By WM. URQUHART, *Liquidator.*

277 THE HONGKONG & SHANGHAI
BANK CORP'N,

(Sgd.) By A. G. STEPHEN, *Acting Manager.*

Witness:-

(Sgd.) JOHN W. HAUSSERMANN.

(Sgd.) JOSE MORENO LACALLE.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila:

Be it remembered that on this 30th day of January, 1907, before me the undersigned, a Notary Public in and for the City of Manila, Philippine Islands, personally came W. Urquhart, known to me to be the same person who executed the foregoing agreement, and acknowledged that he executed said agreement as his free and voluntary act and deed for and on behalf of the said Aldecoa & Co., in liquidation, as the duly authorized and elected

liquidator thereof, Cedula A-1,330,176, January 25, 1906, Manila, P. I.

[NOTARIAL SEAL.]
(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires December 31st, 1908.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila:

Be it remembered that on this 30 day of January, 1907, before me the undersigned, a Notary Public in and for the City of
278 Manila, Philippine Islands, Personally came A. G. Stephen,
known to me to be the same person who executed the foregoing agreement, and acknowledged that he executed said agreement as his free and voluntary act and deed, for and on behalf of the said Hongkong & Shanghai Banking Corporation as the Acting Manager thereof, Cedula A-1,479,705, January 18, 1907, Manila, P. I.

[NOTARIAL SEAL.]
(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires December 31st, 1908.

279 (Title of the Case Omitted.)

Cross-complaint.

Come now Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, once more, before this Court and with leave of the same, file against the Hongkong and Shanghai Banking Corporation, William Urquhart and Aldecoa & Company in liquidation, a complaint based in the following facts, to wit:

I.

Plaintiffs are all of lawful age and residents of the City of Manila, Philippine Islands.

II.

That defendant Hongkong and Shanghai Banking Corporation is a corporation duly organized and existing under and by virtue of the laws of the British Colony of Hongkong, and duly registered and licensed to do business in the Philippine Islands in accordance with the laws thereof. The defendant Aldecoa & Company in liquidation is a general mercantile partnership (sociedad mercantil regular colectiva) which on December 31, 1906, this being the date of expiration of its social term, entered into liquidation under the direction of Mr. William Urquhart, who at present acts as liquidator of Aldecoa & Company and is another of the defendants herein.

III.

In the month of February of the year 1897, Doña Isabel Palet the mother of these plaintiffs, making use of the right reserved to her in the articles of partnership of Aldecoa & Company of December 31, 1896, paid into and deposited with the house of said firm the important amount of P308,355.45 4/, in cash, this sum being the property of and belonging exclusively to these plaintiffs, under the agreement that one half of this deposit could be withdrawn by or reimbursed to the depositors at any time and the other half could only be reimbursed within the term of six years from January 1st, 1898, and that such credits would be preferred credits and that the firm of Aldecoa & Company could not contract any obligation which could be preferential to said credit which would in the meantime earn the interest of five per cent per annum which later on was raised to six per cent.

IV.

On December 31st, 1906, the firm of Aldecoa & Company entered into liquidation and on that date the credit of these plaintiffs reached the sum of P143,369.37, which, with the accumulated interest, amounted on May 16, 1908, to P155,127.31.

V.

On or about said date plaintiffs herein filed an action against Aldecoa & Company to recover the balance of the deposit they had with said firm, and in civil case No. 6087 of this Court judgment was rendered finding and determining the amount of plaintiffs' credit and sentencing Aldecoa & Company in liquidation to the payment of the same. In said judgment it was also decreed that the credit of these plaintiffs was preferential and it was to earn an interest of six per cent per annum.

VI.

In the execution of the judgment, the judgment creditors did not find sufficient property in possession of Aldecoa & Company liable on execution to cover the whole amount of said judgment; but all the rest most important and most valuable property of said firm were delivered or mortgaged to the Hongkong and Shanghai Banking Corporation the defendant herein, as security for the payment of a certain credit acknowledged by public instrument executed on February 23, 1906, under and according to the agreements and contracts executed first by the Manager and afterwards by the liquidator of Aldecoa & Company. These contracts and instruments are as follows:

- (a) Contract of December 23, 1906, a copy of which is attached to this record marked Exhibit "C" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(b) Contract of June 13, 1907, a copy of which is attached to this record marked Exhibit "E" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(c) Contract of January 30, 1907, a copy of which is attached to this record marked Exhibit "G" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(d) Contract of June 13, 1907, a copy of which is attached to this record marked Exhibit "F" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(e) Contract of August 30, 1907, a copy of which is attached to this record marked Exhibit "D" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

VII.

Each and every one of the contracts mentioned in the preceding paragraphs were executed by Aldecoa & Company in favor of
283 the Hongkong Bank without power or authority to do so, in violation of the agreement entered into by and between Doña Isabel Palet on behalf of these plaintiffs and Aldecoa & Company, referred to in paragraph III of this complaint, and in fraud and to the prejudice of these plaintiffs who were preferred creditors of Aldecoa & Company in the sum of P149,492.77; and they were executed by the manager and the liquidator of Aldecoa & Company without power or authority to do so.

VIII.

In civil case No. 7493 of this Court of First Instance of Manila, these plaintiffs filed an action to have the contract mentioned in clause (c) of paragraph V of this complaint declared null and void, upon the same grounds and allegations as those set forth in the preceding paragraph; and the Court on the 31st of August, 1910, rendered judgment finding and decreeing that for the above reasons said contract was null and void and that the property mortgaged by virtue thereof in favor of the Bank should have to be applied to the payment of the judgment secured by plaintiffs against Aldecoa & Company in civil case No. 6087.

IX.

Said judgment, however, has not been executed by reason of the appeal taken against the same by the Hongkong Bank, and
284 is now pending before the Supreme Court of the Philippine Islands; but even should said judgment be affirmed, its effect would not cover the total amount of the judgment rendered in civil case No. 6087 since there would still remain an unpaid balance of about P70,000.00 Philippine currency.

X.

The firm of Aldecoa & Company in liquidation, by virtue of the transfer and mortgage of its property to the Hongkong and Shanghai Banking Corporation as stated in the foregoing paragraph is to day absolutely insolvent, and these plaintiffs have no other means to recover their credit but through the annulment of said transfer and mortgage.

Wherefore plaintiffs pray for judgment whereby this Court shall decree:

(a) That the credit of these plaintiffs against Aldecoa & Company in liquidation, acknowledged and decreed by the judgment rendered in civil case No. 6087 of this Court, has preference over the credit of the Hongkong and Shanghai Banking Corporation claimed by the complaint which has originated this case.

(b) That the mortgage contract executed by Aldecoa and Company in favor of said Banking Corporation, mentioned in clauses (a), (b), (c) and (d) of paragraph V of this complaint, are null and void in regard to this plaintiffs and in so far as they may be sufficient to cover the judgment rendered in civil case No. 6087 of this Court.

(c) That the property which is the object of said contracts be declared liable preferentially to the payment of said judgment, or in other words, that the proceeds of the sale of the same by the sheriff of Manila, be applied in the first place to satisfy the judgment rendered in favor of these plaintiffs in civil case No. 6087.

Manila, February 2, 1912.

(Signed)

CHICOTE AND MIRANDA,
*Attorneys for Joaquín, Zoilo, and
Cecilia Ibañez de Aldecoa.*

(Title of the Case Omitted.)

Amended Answer.

Comes now defendant Isabel Palet y Gabarro through her attorneys Chicote and Miranda, and answering the complaint of the Hongkong and Shanghai Banking Corporation as to that part which may refer to her, states:

That she admits paragraph I of the complaint.

That she admits paragraph II of the complaint.

That she admits part of paragraph III, to wit: that at all the dates mentioned in the complaint the exponent Isabel Palet, widow of Aldecoa, was a general partner of the firm of Aldecoa & Company; that she denies all the other facts alleged in said paragraph.

That she admits part of paragraph IV of the complaint, to wit: that the exponent on February 23, 1906, executed the public instrument a copy of which is attached to the complaint, marked Ex-

hibit "A" for the purposes of identification, and made part thereof; but she denies all the other facts contained in said paragraph.

That she admits part of paragraph V of the complaint, to wit: that the exponent on March 23, 1906, executed the public instrument copy of which is attached to the complaint, marked Exhibit "B" for the purposes of identification, and made part thereof; but she denies all the other facts contained in said paragraph.

That she denies generally and specifically each and every one of the facts and allegations contained and specified in each and every one of paragraphs VI, VII, VIII, IX, X, XI and XII of the complaint.

As a special defense she alleges:

I.

That plaintiff Hongkong and Shanghai Banking Corporation in violation of the articles and stipulations contained in the instrument of February 23, 1906, which is mentioned in and made part of the complaint as Exhibit "A," entering into an agreement first with the manager of Aldecoa & Company and later with the liquidator of that firm, without said manager and liquidator having power or authority sufficient to do so, not only consented in that the debt of Aldecoa & Company should go beyond the limit agreed to with the exponent by the agreement of February 23, 1906, but voluntarily renounced to apply in payment of said debt the property of Aldecoa & Company which came to its hands for such purpose, and entered into agreements and stipulations with the debtors of Aldecoa & Company extending the time of payment of their debts which were to be applied to the reduction of that credit.

II.

On or about the year 1907, the firm of Aldecoa & Company being in its period of liquidation obtained from its debtors the acknowledgment of their debts and large securities for the payment of the same, the total amount of said securities being over P500,000 covering with excess the credit of the plaintiff against Aldecoa & Company, all of which debts were due and payable; and Aldecoa and Company at the request of the plaintiff bank gave the latter a special commission to collect those debts and apply the proceeds of the same to the reduction of the pending account; but the Hongkong Bank failed afterwards to make use of the commission given to the same, confining itself to enter into an agreement with the debtors of Aldecoa & Company in regard to the gradual payment of their debts, and carrying the full amount of its credit, without any reduction, with the securities obtained in that manner.

III.

That this conduct of the plaintiff, inspired by the desire of benefiting itself by the accumulation of interest to its credit without

decreasing the securities given, but on the contrary increasing them gradually, has resulted to the damage of this defendant both as general partner and as mortgage guarantor of Aldecoa & Company.

IV.

That by the conduct and behaviour of plaintiff bank as creditor of Aldecoa & Company, this firm, and therefore, this defendant, as subsidiary debtor had been prevented to reduce and pay plaintiff's credit in due time and on the terms agreed upon, and are prevented now to convert those values, rights and actions of Aldecoa & Company into cash in order to comply with the agreement of February 23, 1906.

289 Wherefore, this defendant Isabel Palet y Gabarro asks this Court to render judgment adjudging and decreeing that the Hongkong Bank has no action against this defendant as mortgage guarantor of Aldecoa & Company; that the contracts of security, additional, as they are so called, to that of February 23, 1906, executed by the manager and by the liquidator of Aldecoa and Company, without legal authority to do so are null and void and without effect; that the liability of this defendant for the real amount which she may be obliged to pay as general partner of and subsidiarily to the firm of Aldecoa & Company be determined and limited, and that plaintiff corporation be ordered to receive and to apply in payment of its credit after a true and just liquidation the credits of Aldecoa & Company as to which it has made arrangement with the debtors, in the same manner and under the same terms as said plaintiff has agreed with them for the payment of their respective debts.

This defendant also prays for any other remedy which may be deemed just and equitable.

Manila, February —, 1912.

(Signed) CHICOTE AND MIRANDA,
Attorneys for the Defendant Isabel Palet y Gabarro.

Received copy this 6th day of February, 1912.

(Signed) HAUSSERMANN, COHN & FISHER,
Attorneys for Plaintiff.

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(Title of the Case Omitted.)

Amended Answer.

The defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa answering the complaint as to that which may affect them, state:

That they deny generally and specifically each and every one of the allegations of the complaint.

And as a special defense they allege:

I.

That in the year 1896 they were minors, the eldest one of said defendants being 11 years old; they were fatherless orphan- and were under the patria potestad of their mother Doña Isabel Palet. That at that time, as they afterward learned, their mother formed with others a mercantile partnership under the firm name of Aldecoa and Company, in which partnership these defendants were included as industrial partners with a share in the profits of the firm's business, but being exempt from any obligation of working for the partnership and being also authorized to choose their place of abode wherever they might deem convenient. No capital was contributed or paid into the partnership by these defendants.

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II.

These defendants making use of their rights and actions, and when they became aware that under and by virtue of said contract of partnership it was pretended to impose upon them obligations and liabilities which they never contracted or desired to contract, filed an action to have the said contract of partnership annulled in regard to these defendants, and in civil case No. 6088 of the Court of First Instance of Manila, it was decided and decreed by final judgment dated September 5th, 1908, that the said contract of partnership and whatever acts and contracts had been executed subsequent to and in consequence thereof, were in whatever they should or might affect these defendants null and void and of no effect.

Wherefore, these defendants ask the Court that the complaint be dismissed in so far as it may seek to make them jointly liable with the firm of Aldecoa & Company in liquidation and as supposed general partners thereof for the claim of the plaintiff corporation, the Hongkong and Shanghai Banking Corporation.

Defendants Joaquin and Zoilo Ibañez de Aldecoa allege also in their favor and as a second special defense the following
292 facts:

I.

That in the year 1897 these defendants, having been born in the Philippine Islands and being minors, the eldest of them being only at that time 12 years old, under the patria potestas of their mother Isabel Palet, who was then a resident of and legally domiciled in the City of Manila, Philippine Islands, left together with their mother for the kingdom of Spain, coming back to the Islands also in company of their mother in the year 1902.

II.

In the year 1906 these defendants being still minors, since Joa-

quin would be only about 12 years and Zoilo 20 years old, and being residents of the City of Manila, signed the public instrument which is attached to the complaint in this case marked plaintiff's Exhibit "A," defendants allege that they were compelled to execute the said contract by the managers of the firm of Aldecoa & Company under the false pretense that these defendants were general partners of Aldecoa & Company and, therefore, liable jointly for all the obligations of the partnership and most especially for the credit then existing in favor of the plaintiff banking corporation, to the execution of which, said bank was about to proceed
293 not only against the property of the partnership but also against the private property of the general partners thereof, unless the securities demanded by the bank, consisting of the mortgage of the private property of Doña Isabel Palet and of these defendants, were not given to said bank.

III.

These defendants also allege that by virtue of said contract (plaintiff's Exhibit "A") no utility or benefit was accrued to them, but on the contrary, there was considerable damage caused to their private interest; the whole interest, benefit and utility of such contract accruing exclusively to the two contracting firms and to the capitalist partners of Aldecoa & Company and especially to Doña Isabel Palet, main and most important capitalist partner of this firm.

IV.

These defendants also allege that they had not sufficient legal capacity to execute said contract and make it valid; inasmuch as although it was stated therein that these defendants were emancipated by virtue of a voluntary emancipation deed executed by their mother, and that they took part in the execution of said contract with the alleged consent of their mother, these de-
294 fendants do hereby allege that such emancipation was null and void and even if it were valid and legal, the mother of these defendants had no authority or power under the law to consent to that execution by reason of legal incompatibility, to wit, because such contract was for the benefit of Doña Isabel Palet and these defendants were not assisted by any person duly authorized by law to supply their lack of capacity.

V.

Based on the foregoing statements these defendants filed an action before this Court of First Instance for the annulment of said mortgage contract (plaintiff's Exhibit "A") in so far as it affected these defendants, and in civil case No. 6086 of this Court and under date of March 28, 1910, judgment was rendered decreeing that said mortgage contract was null and void and of no effect in regard to these two defendants.

VI.

Defendant Joaquin Ibañez de Aldecoa, also alleges that although the judgment referred to in the preceeding paragraph was annulled and set aside by the same Court and in the same case
295 by another judgment rendered thereafter on the 27 of January, 1911, declaring that said contract was valid and subsisting in regard to this defendant, said judgment has been appealed to the Supreme Court and is actually pending hearing and decision before said high Tribunal.

VII.

Both defendants allege, that by virtue of the facts above stated in the two preceeding paragraphs there is a *litis pendentia* between these two defendants and the firm of Aldecoa & Company in liquidation and the Hongkong and Shanghai Banking Corporation who are parties in this case.

And as a third special defense these two defendants Joaquin and Zoilo Ibañez de Aldecoa also allege but only in default of the two foregoing special defenses, the following facts:

I.

That even if these defendants should be liable to plaintiff by virtue of said contract Exhibit "A" of the complaint, this obligation has been extinguished and these defendants have
296 been released from the same for the following reasons:

(a) Plaintiff corporation in violation of the clauses contained in said contract entering into an agreement first with the manager and later with the liquidator of Aldecoa & Company—without said manager and liquidator having any authority or power sufficient to do so,—not only consented that the debt of Aldecoa & Company should go beyond the limit agreed to in said contract, but voluntarily renounced to apply, in payment of said debt, property of the debtor firm which came to its hands for such purpose, and entered into agreements and stipulations with the debtors of the debtor firm extending the time of payment of their debts which were to be applied to the reduction of that credit.

(b) In the year 1907, the firm of Aldecoa & Company obtained from its debtors the acknowledgment of their debts and securities for the payment of the same, the total amount of said securities being over P500,000.00, covering with excess the credit of the bank; and Aldecoa & Company, at the request of the plaintiff, gave the latter a special commission to proceed to collect those debts and apply the proceeds of the same to the reduction of the account; but the bank failed to make use of the commission given and agreed with the debtors of Aldecoa & Company as to the gradual
297 payment of their debts, carrying at the same time the full amount of its credit against this firm with the securities obtained in that manner.

II.

By reason of plaintiff's conduct the main obligation constituted by said contract Exhibit "A" of the complaint has been tacitly novated or modified making it also impossible for the guarantors of said obligation to subrogate themselves in place of Aldecoa & Company in the condition in which this firm was before the act of the Bank to reimburse themselves for whatever they might be obliged to pay by reason of said mortgage contract.

Wherefore, these defendants ask the Court to dismiss the complaint with costs against the plaintiff.

Manila, February 6, 1912.

(Signed)

CHICOTE AND MIRANDA,
*Attorneys for Defendants Joaquin,
Zoilo and Cecilia Ibañez de Aldecoa.*

The proceedings at the trial of this case, the oral testimony taken and the exhibits offered in evidence by all parties plaintiff and defendant, are as follows:

Oral Testimony.

298 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the Judicial District of Manila.

Sala II.

Civil Cause No. 8519.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff,
vs.

ALDECOA & COMPANY, Defendant.

Proceedings.

This case came on for hearing in Sala II of this Court, the Hon. Charles S. Lobinger, presiding, upon the 22nd day of January, 1912, at 10 A. M.

Appearances.

For Plaintiff: Messrs. Haussermann, Cohn & Fisher: by Mr. John T. Haussermann, and Mr. F. C. Fisher.

For Defendant: ————.

For Intervenor: ————.

Proofs of Plaintiff.

Mr. Fisher: Counsel for plaintiff wishes to suggest the death of the defendant Alejandro McCloud.

Mr. Fisher: Counsel for plaintiff requests permission to amend the last clause of the second paragraph of the complaint, by striking out the second clause and inserting in lieu thereof, the following:

"That at all times herein mentioned the defendants Joaquin and Zoila Aldecoa, and the intervenor Cecilia Aldecoa have been industrial and collective partners of the defendant Aldecoa & Company, and so appeared on the records of the mercantile registry of the city of Manila."

The amendment was permitted by the court; and Mr. Miranda asked that his exception to the ruling be noted.

Mr. Haussermann: We offer in evidence the exhibits attached to the complaint marked Exhibits A, B, C, D, E, F, and G.

Received without objection.

Mr. Haussermann: We offer in evidence the articles of partnership of Aldecoa & Company.

Mr. Miranda: In representation of Ysabel Palet and of Zoilo and Joaquin Aldecoa we object to the admission of this document
300 as being immaterial and (impertinent) incompetent.

The Court: Decision reserved.

Mr. Miranda: Exception.

Mr. Miranda: I wish that Mr. Fisher would state in the record his reasons for wishing to present this Exhibit.

Mr. Fisher: Counsel for plaintiff states that the purpose for which document, Exhibit H is offered, namely, the articles of copartnership of Aldecoa & Co. in liquidation, is to show the liability of the defendants, Dona Ysabel Palet, widow of Aldecoa, and the defendants Joaquin, Zoilo and Dona Cecilia Aldecoa, as members of the said firm of Aldecoa & Co. upon the obligations in favor of the plaintiff bank sued in this action.

Mr. Miranda: I wish to insist upon my objection as incompetent.
The Court: Decision reserved.

Counsel agree that Exhibit H is a true copy of its original and may be considered of the same effect as though the original had been produced and offered in evidence.

Mr. Miranda: I move that the suit for the foreclosure of the mortgage be dismissed on the ground that it now appears that this
301 is an action to obtain a personal judgment against Ysabel Palet, Joaquin & Zoilo y de Aldecoa.

The Court: Decision reserved.

Mr. Miranda: Exception.

It is agreed of record by counsel for the respective parties to this suit that the articles of partnership of Aldecoa & Co., embodied in the original of the document of which Exhibit H is a copy, was duly recorded in the mercantile registry of the city of Manila.

This agreement with respect to the registration of the original of Exhibit H is made subject to the right reserved to Mr. Miranda to prove the subsequent cancellation of the inscription with respect to Zoilo and Joaquin Aldecoa, and Cecilia Aldecoa.

Mr. Haussermann: I offer in evidence as Exhibit I of the plaintiff, Acta No. 44 of the firm of Aldecoa & Co., recorded on page 139 of the book known as "Libro de Actas, Aldecoa & Co.," the authority of the liquidator; with permission to substitute the original with a copy.

Mr. Haussermann: I also offer in evidence as Exhibit J, Acta No. 45, as recorded on pages 140, 141, 142 and 143 of the same book; with permission to substitute a copy of the original.

Mr. Haussermann: I offer in evidence as Exhibit- K and 302 K-1, the application for the registration of the property and the decree, in case No. 2841 of the Court of Land Registration of the City of Manila; with permission to substitute certified copies of the same in lieu of the original.

Mr. Haussermann: I also offer in evidence as Exhibit- L and L-1, the application for the registration of the property and the decree, in case No. 2842 of the Court of Land Registration of the City of Manila; with permission to substitute certified copies of the same in lieu of the original.

Admitted without objection.

It is stipulated and agreed by and between counsel for the respective parties to this cause that the property described in the decrees in causes Nos. 2841 and 2842, respectively, of the Court of Land Registration herein referred to as Exhibits K-1 and L-1, are the same properties as those described in Exhibits A and B as the property in Malate, of the defendants Joaquin and Zoilo Aldecoa and Mrs. Aldecoa.

Mr. Haussermann: We offer in evidence as Exhibit M, the mortgage's certificate of title No. 37 of the registrar of property in the province of Albay, for the purpose of showing the correct description of the property referred to in plaintiff's Exhibit C.

303 It is agreed by and between the parties hereto that the property described in Exhibit M, is the same as that referred to in Exhibit C, situated in the province of Albay.

It is stipulated by the parties that the real properties described in plaintiff's exhibit F have, subsequent to the date of that document, been registered under the Land Registration Act, and that accurate description of the said properties is to be found in the decree entered in case No. 1429 of the Court of Land Registration, copy of which will be produced and introduced in evidence as plaintiff's Exhibit N.

It is similarly stipulated by counsel for the respective parties, with respect to the property described in Exhibit E; and copy of the same will be produced and introduced as plaintiff's Exhibit O.

J. SILVA, called to the stand as a witness for plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Haussermann:

Q. Please state your name, and the position that you hold.

A. J. Silva; bookkeeper and ledger keeper of the current
304 account department of the Hongkong & Shanghai Banking Corporation of Manila.

Q. As such, have you charge of the ledger account of Aldecoa & Co., the current account?

A. Yes, sir.

Q. Have you got a copy of the account as set forth in said ledger?

A. Yes, sir.

Q. Will you produce it?

A. (Witness produces book, which is marked for identification Plaintiff's Exhibit P.)

Q. How is that account designated in the books of the Hongkong Bank?

A. The account is called "Aldecoa & Co., in Liquidation, Liquidator's Account."

Q. What was the debit balance of Aldecoa & Co. on the 31st of December, 1906?

A. The debit balance stood at P516,517.98.

Q. That is the close of business of the 31st of December, 1906?

A. Yes, sir.

Q. What was the debit balance of Aldecoa & Co. at the close of business December 31st, 1907?

A. The balance stood at debit, P439,357.06.

Q. What was the debit balance of Aldecoa & Co.'s account at the close of business on December 31, 1908?

A. The balance stood at debit, P438,289.57.

305 Q. What was the debit balance of Aldecoa & Co.'s account at the close of business on December 31, 1909?

A. The balance stood at P406,946.54.

Q. What was the debit balance of Aldecoa & Co.'s account at the close of business December 31, 1910?

A. The balance stood at P396,080.66.

Q. What was the debit balance of Aldecoa & Co.'s account at the close of business December 31, 1911?

A. P380,523.46.

Q. What is the last entry made in the account of Aldecoa & Co. in liquidation?

A. The last entry was made on the 13th of January 1912, by credit for account of Zobeldia, Tabaco, P3,000.

Q. What is the debit balance of Aldecoa & Co. in liquidation at the close of business January 13, 1912?

A. Debit P377,523.46.

Q. Plus interest, what?

A. Plus interest from the 31st of December at the rate of 7 per cent per annum.

Q. The other part of that account? What was the balance of the account designated, Aldecoa & Co., in liquidation, Liquidator's account, to date?

306 A. Debit balance P13,460.55, plus interest from December 31, 1911, at the rate of 7 per cent per annum.

Q. And, the interests have been calculated and charged up to the 31st of December, 1911?

A. Yes, sir.

Q. And, are there any corrections or changes to be made in that account; and if so, what?

A. By instruction from our attorney, Mr. Haussermann, the Account of Aldecoa — Co. in liquidation on the 8th day of February, 1907, should have been credited with P22,352.63, the account of M. de Achaval, Legaspi; with interest from January 1, 1907 to February 8, 1907, 38 days.

Q. That is to say, that on February 8, 1907, the account of Aldecoa & Co. should have been credited with the sum of P22,352.63, plus interest thereon from the 1st day of January, 1907, to February 8, 1907, being 38 days, our account of Martin Achaval?

A. Yes, sir.

Q. To carry out the instructions of the client, what cross entries must be necessary to make the account of Aldecoa & Co. show correctly? On the 8th day of February, Aldecoa & Co. in liquidation transferred to the Hongkong & Shanghai Banking Corporation the account due Aldecoa & Co. from Martin Achaval, amounting to the sum of P22,352.63, with interest thereon at the rate of 7 per cent per annum from the 1st day of January, 1907 to February 8, 1907; the bank accepted that assignment, thereby entitling Aldecoa & Co. to the credit of that amount. Under and by virtue of that deed of assignment, Achaval agreed to pay that P22,352.63 in installments as follows: On the 30th of July, 1907, the sum of P6,000; on or before the 30th of June, 1908, the sum of P8,000; and on or before the 30th of June, 1909, the balance of P352.63; the deferred payments to draw interest at the rate of 7 per cent per annum from the 1st day of January, 1907? Is that correct?

A. Yes, sir.

Q. The bank, instead of giving Aldecoa & Co. the credit for the total sum of P22,352.63 on the day that the assignment was made, only credited Aldecoa & Co. on the payments as made by Achaval, to wit: Achaval paid P3,000 on account on the 4th of May, 1907; and P3,000 on that account on the 13th of June, 1907; and P8,000 on that account on the 15 of August, 1908. Therefore in order to make the account stand as it should have been by giving the credit on the 8th day of February, 1907, Aldecoa & Co. should be credited with that amount and charged with this amount?

A. Credited with interest.

Q. Aldecoa & Co. in liquidation should be credited with the sum of P7,823.42 interest, and charged on interest account the sum of P3,827.18?

A. Yes, sir.

Q. Such cross entries *with* rectify the errors?

A. We will credit Aldecoa & Co. in full with P22,352.63, and the

interest P7,823.42, and debit Aldecoa & Co. with the installments, or credit, which amount to P14,000, and the interest which we have allowed, which would be P3,827.18.

Q. Does that account which you have there, Aldecoa & Co. in liquidation, show the payments made by what are known as the provincial debtors of Aldecoa & Co., to the bank, on the account of Aldecoa & Co.?

A. Yes, sir.

Q. Have you made a list of those payments by the various provincial debtors?

A. Yes, sir.

Q. Taken from that account?

A. Yes, sir (witness produces a list which is marked for identification, plaintiff's Exhibit Q).

Mr. Haussermann: I offer in evidence Exhibit P of the plaintiff, being the account of Aldecoa & Co. in liquidation, reserving
309 the right for the bookkeeper to make the corrections by cross entries, referred to in his testimony.

Mr. Fisher: We offer in evidence Plaintiff's Exhibit Q, list of provincial accounts produced by the witness.

Hearing continued until to-morrow, January 23rd, 1912.

310

Session of Saturday, January 27, 1912.

Mr. Fisher: Plaintiffs offer in evidence as Exhibit R, a copy of the entries in the books of Aldecoa & Co. in liquidation relating to the account of the defendant concern and the plaintiff bank, for the purpose of showing the amounts shown to be due the plaintiff corporation on the book as of December 31, 1911, on the books of defendant firm.

Mr. Miranda: Counsel for defendants admit that plaintiff's Exhibit R is a correct copy of the original entries in the books of account of Aldecoa & Co., and agree that said copies may be considered by the court for the same effect as the original books of account.

Mr. Miranda: Counsel for defendants Isabel Palet and Joaquin and Zoilo Ibanez y Aldecoa, wish to reserve the right to introduce testimony to show that the accounts referred to as Exhibit R are incorrect.

Mr. Fisher: Plaintiffs offer in evidence as Exhibit S, copies of the account of the Hongkong Banking Corporation, plaintiff herein, with the liquidator of Aldecoa & Co. in liquidation, the defendant
herein.

311 It is admitted by counsel for defendants that plaintiff's exhibit S are correct copies of the account shown by the books of the Hongkong Banking Corporation, plaintiffs herein, and agree that said copies may be considered by the court for the same effect as the original books of account; but ask to reserve the right to show that said accounts are incorrect.

Mr. Fisher: Plaintiffs offer in evidence as their Exhibit T, a certified copy of an instrument executed in the city of Manila, July 31,

1903, by the defendant Isabel Palet, mother of the defendant Joaquin Ybanez y Aldecoa, by which said defendant Joaquin Ybanez y Aldecoa was emancipated by his mother.

Counsel for defendants admits that plaintiff's Exhibit T is a true copy of its original, and that the said original bears the signatures of the persons whose names are shown on the said copy purporting to be signers of the said document; and agree that the copy may be admitted in lieu of the original for the same effect as though the original had been produced and offered in evidence.

Mr. Miranda: I object to the admission of this exhibit as immaterial, irrelevant and incompetent.

The Court: Ruling reserved.

312 Mr. Fisher: Plaintiffs offer in evidence as their Exhibit U, a certified copy of an instrument executed in the city of Manila, July 31, 1903, by the defendant Isabel Palet, mother of the defendant Zoilo Ybanez y Aldecoa, by which said defendant Zoilo Ybanez y Aldecoa was emancipated by his mother.

Counsel for defendants admits that plaintiff's Exhibit U is a true copy of its original, and that the said original bears the signatures of the persons whose names are shown on the said copy purporting to be signers of the said document; and agree that the copy may be admitted in lieu of the original for the same effect as though the original had been produced and offered in evidence.

Mr. Miranda: I object to the admission of this exhibit as immaterial, irrelevant and incompetent.

The Court: Ruling reserved.

Mr. Fisher: Plaintiffs offer in evidence as Exhibit V a copy of a contract entered into, on the 13th of June, 1907, between the plaintiff corporation and the defendants Joaquin Ybanez y Aldecoa and Zoilo Ybanez y Aldecoa, and Ysabel Palet.

Mr. Miranda: The defendants admit that plaintiff's Exhibit V is a true copy of its original, and admit furthermore that Mr. J. M. y de Aldecoa was, on the date of the execution of said document, attorney-in-fact, under general power-of-attorney, of the defendants Isabel Palet and Zoilo Ybanez y Aldecoa.

313 Mr. Miranda: Attorneys for defendants Isabel Palet, Joaquin and Zoilo Ybanez y Aldecoa object to the admission of this document as immaterial, irrelevant and incompetent in this case.

The Court: Ruling reserved.

Mr. Fisher: Plaintiffs offer in evidence as Exhibit W, a copy of the minutes of a meeting of the members of the firm of Aldecoa y Cia., held on the 28th day of August, 1903, in the office of Messrs. Aldecoa y Cia. at which the defendants Joaquin Ybanez y Aldecoa and Zoilo Ybanez y Aldecoa were present, they having signed said minutes.

Mr. Miranda: Counsel for defendants admit that plaintiff's exhibit W is a true copy of its original, recorded in the minute book of the defendant firm of Aldecoa y Cia., and that the said minutes, of which Exhibit W is a copy, were signed by the persons whose names appear on said exhibit as having signed the same.

Mr. Miranda: Counsel for defendants object to the admis-

sion of plaintiff's Exhibit W, as incompetent, immaterial and irrelevant.

314 Mr. Fisher: Plaintiffs offer in evidence Exhibits X, Y and Z, to the same effect as exhibit W.

Mr. Miranda: Counsel for defendants admit that plaintiff's Exhibits X, Y and Z are true copies of their originals, and that said originals were signed by the persons whose names appear on said exhibits as having signed the same.

Mr. Miranda: Counsel for defendants object to the admission of plaintiff's Exhibits X, Y and Z, as incompetent, immaterial and irrelevant.

Mr. Fisher: It is stipulated of record by and between counsel for the respective parties to this suit that the defendant Dona Ysabel Palet is a native of the province of Barcelona, Spain, and is now and has at all times mentioned in this suit been a subject of the Kingdom of Spain.

Mr. Fisher: It is further stipulated that the defendant Zoilo Ybanez y Aldecoa was born in the Philippine Islands on the 4th day of July, 1885; and that the defendant Joaquin Ybanez y Aldecoa was born in the Philippine Islands on the 27th day of March, 1884.

Mr. Fisher: It is further stipulated that the said defendants Joaquin Ybanez y Aldecoa and Zoilo Ybanez y Aldecoa, and their mother, Dona Ysabel Palet, were absent from the Philippine Islands during the whole period embraced between the end of the
315 year 1897 and the beginning of the year 1903.

Mr. Fisher: It is also stipulated that the father of said defendants Joaquin Ybanez y Aldecoa and Zoilo Ybanez y Aldecoa, and husband of Dona Ysabel Palet, was a Spanish subject up to the time of his death, which occurred prior to the American occupation of these Islands.

Mr. Miranda: Counsel for defendants Dona Ysabel Palet, and Joaquin and Zoilo Ybanez y Aldecoa, admit the truth of the facts referred to in the foregoing stipulations, but object to their consideration by the court on the ground that the facts so stipulated are incompetent, irrelevant and immaterial.

The Court: Ruling reserved.

Mr. Miranda: Counsel for defendants desire to reserve their exception in case of adverse ruling.

Witness SILVA, recalled to the stand on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Haussermann:

Q. Please state to the court the amount due to-day on the account of Aldecoa & Co. on January 27, 1912.

316 A. The amount due to-day on the account designated Aldecoa y Cia. in liquidation is P366,636.11, debit. The liquidator's account, debit P13,530.45.

Q. Making a sum total due to-day of how much?

A. P380,166.56, due on this date, January 27, 1912; including all the interests to date.

Cross-examination by Mr. Sanz:

Q. What was the balance on the 29th day of March 1911 against Aldecoa y Cia?

A. Debit P95,780.66.

Q. That is on the two accounts?

A. Only on the one. The other, P12,546.34, not including the interests. The interests were calculated every six months.

Q. And, what was the balance when you came here to testify for the first time, that is, on the 22nd of this month?

A. As shown by the books then, debit P377,523.46, without interest.

Q. And, the other account?

A. P13,460.65.

Q. And, how often were the interests calculated?

A. Both accounts, semi-annually.

Q. Then, in these two balances you have just given me the interest for the prior six months were included?

317 A. Yes, sir; interest calculated December 31, 1911.

Q. And, from the 22nd day of January up to this date this debt of Aldecoa y Cia, has been considerably diminished in amount, has it not?

A. Approximately P15,000.

Q. Was it due to the fact that Aldecoa y Cia, made payments?

A. Payment was made by Zobeldia January 13th; and the adjusting entries on the account of Achaval amounting to about P12,000.

Q. You have made those adjustments of account after the trial of this case, did you; after the commencement of the trial of this case?

A. Yes, sir.

Q. These payments which you have credited to the account of Achaval after the commencement of the trial, were payments made long ago, were they not?

A. There were three payments made, one on the 4th of May, 1907, of P3,000; another on the 13th of June, 1907, of P3,000; and the other on the 15th of August, 1908, of P8,000.

Q. I am referring to what you have credited to Aldecoa y Cia. after the commencement of the trial of this case.

318 Mr. Fisher: Objection on the ground that it assumes a statement which has not been made by the witness, namely, that the amounts were credited for the amounts paid by Achaval.

Objection sustained.

Mr. Sanz: Exception.

Mr. Sanz:

Q. Isn't it true that after the commencement of the trial of this case the Hongkong Bank credited on this account of Aldecoa & Co. amounts which it had received a long time before, coming from debtors of Aldecoa & Co. whose credits had been transferred to the bank?

Mr. Fisher: Objection, on the ground that it assumes that there is evidence that credits have been transferred to the bank, whereas the evidence, so far, only shows one credit transferred to the bank, namely, the Achaval credit.

The Court: He may answer.

Mr. Fisher: Exception.

A. According to the books, there were adjusting entries.

Mr. Haussermann:

Q. What adjusting entries?

A. Adjusting entries have been made according to the books on January 26th, for the account of Achaval, Legaspi, P22,352.63. There has been an entry made to the credit of Aldecoa y Cia. account, on January 26, 1912, account of M. Achaval, Legaspi, of P22,352.63, plus interest at 7 percent, from 1st January, 1907, to February 8, 1907, and from February 8, 1907, to the 31st, December, 1911, totalling P30,176.05; and entries debiting Aldecoa with P3,000, plus interest at 7 percent from 4th May, 1907 to the 31st of December, 1911, P979.23 and P3,000 from the 13th of June, 1907 to the 31st, December, 1911, P596.22, and P8,000 from the 15th of August, 1908 to the 31st of December, 1912, with interest, P1,891.73, totalling P17,827.18.

Mr. Sanz:

Q. And up to the time those amendments were made those several amounts have been accruing interest in favor of the bank against Aldecoa y Cia?

A. By these entries we have refunded what we have charged.

Mr. Miranda:

Q. State what amount was Aldecoa y Cia. indebted on the 23rd day of February, 1906?

A. Debit P474,016.40, without interest.

It is stipulated that the defendant Ysabel Palet, after the death of her husband, the father of the defendants Joaquin and Zoilo Ybanez y Aldecoa, up to the present time has never contracted a second marriage.

Mr. Miranda: This is admitted as true, but is objected to as immaterial.

Hearing continued to Saturday, February 3, 1912.

321

Session of Tuesday, February 6, 1912.

Mr. Fisher: Plaintiff asks permission to substitute one of duplicate originals of the contract of the 13th of June, 1907, referred to in this proceeding as Exhibit V, in lieu of a copy of the contract which was introduced in evidence in the last hearing.

No objection on the part of the defense; and document substituted for copy.

Mr. Fisher: We offer in evidence as Exhibit AA, a document of assignment executed by Mr. Urquhart as liquidator of the defendant firm of Aldecoa & Company, of the claim of credit of Aldecoa & Company against one Martin de Achaval.

It is admitted by counsel that the signatures as shown on plaintiff's Exhibit AA are genuine and that the document was executed by the persons who purport to have signed the same.

Mr. Fisher: Plaintiffs also offer in evidence as their Exhibit BB, public instrument dated March 4, 1909, executed on behalf of Aldecoa & Company in liquidation, by Mr. William Urquhart; on behalf of the plaintiff corporation by Mr. A. Stephen, Manila Manager of the plaintiff bank, declaring the assignment of the Achaval credit in Exhibit AA to have been an absolute assignment.

322 Admitted without objection.

It is admitted by counsel that the signatures as shown on plaintiff's Exhibit BB are genuine and that the document was executed by the persons who purport to have signed the same.

Mr. Fisher: I wish it to appear of record that there are no more accurate descriptions available of the properties described in plaintiff's exhibits, and referred to herein as mortgages upon properties of provincial debtors, it appearing that the applications for registration in the Court of Land Registration of those properties were dismissed for failure to prosecute.

Mr. Fisher: It is stipulated by and between attorneys for the respective parties litigant in this proceeding that amended pleadings on behalf of plaintiffs and defendants may be substituted to the same effect as though they had been originally presented in the amended form. This stipulation assented to by counsel for defense.

Counsel for Mr. Urquhart states that he will stand upon the original complaint of intervention filed on behalf of Mr. Urquhart, and now in the record. And plaintiffs also state that their answer to Mr. Urquhart's complaint of intervention shall also be allowed to stand.

323 Plaintiff Rests, with the exception of the testimony of Mr. Del Pan.

Proofs of the Defense.

WILLIAM URQUHART, a witness for the defense, being first duly sworn, testified as follows:

Direct examination by Mr. Miranda:

Q. Please state your name, address and occupation.

A. William Urquhart.

Q. Where do you live?

A. Santa Mesa; it used to be No. 809; I don't know what the new number is.

Q. Occupation?

A. Merchant; and liquidator of Aldecoa & Company.

Q. Since when have you been liquidator of Aldecoa & Company?

A. Since the 2nd of January, 1907.

Q. As such liquidator of Aldecoa & Company, have you made certain agreements with the Hongkong Bank?

A. Yes, sir; several of them.

Q. And what were those agreements, in general terms?

A. Arrangements with various debtors of Aldecoa & Company for payment.

324 Q. What was the purpose of these agreements?

A. To give time to these debtors to pay.

Q. Were they agreements made by the debtors?

A. Some of them,—yes; made with the debtors.

Q. And with regard to these credits of Aldecoa & Company against these debtors, did you have any agreement with the Hongkong Bank?

A. Yes, sir; I signed an agreement on the 30th of January, 1907.

Q. State whether those agreements you have just referred to is the same agreement as exhibit G of the complaint?

A. Yes; it appears to be the same. That is a copy of it.

Q. By virtue of this agreement and in accordance with what is stated therein, you gave permission to the Bank to make efforts to collect from the debtors of Aldecoa & Company several amounts aggregating the sum of P508,976. State whether or not the Hongkong Bank has done anything for the purpose of carrying out this commission?

A. Yes.

Q. What did the Bank do?

A. The Bank made a previous agreement with Zobeldia to collect his debt to Aldecoa on the 16th of January, and has collected various amounts,—the quantity was named here a few days ago.

325 43,500 according to the notes I have got.

Q. You stated that the Bank made an agreement with Zobeldia. Will you please state what that agreement was that the Bank made with Zobeldia?

Mr. Haussermann: I object to what the agreement was. The agreement speaks for itself.

Q. Was there an agreement in writing?

A. Yes; there is an agreement in writing.

Q. Have you that contract in your possession?

A. I had a copy of it.

Q. Where have you got it?

A. I gave it to Mr. Sanz a long time ago.

Mr. Miranda: I offer in evidence the document marked Exhibit 1 of the defense, of the defendant Ysabel Palet, consisting in the contract made between the Hongkong Bank and Mr. Zobeldia, one of the debtors of Aldecoa & Company, dated 16 January, 1907, and ratified before the notary D. C. Williams.

No objection.

Mr. Miranda:

Q. What other agreement did the bank have with the other debtors of Aldecoa & Company?

A. There was one with Acaval; I don't remember the date. I think it was the 8th of February, 1907.

Q. Any other?

A. I don't recollect any other.

326 Q. With respect to the debtor, Acordagoecoechea Hermanos, did the bank have anything to do with them?

A. I think there was an escritura made out, but he did not comply with it and we had to sue him for the balance of his debt.

Q. Who sued him?

A. Sr. Sanz.

Q. With respect to the debtor, Manuel Veloso, did the bank make any agreement with Sr. Veloso?

A. No, sir.

Q. Did you offer in part payment of the debt of Aldecoa & Company to the bank certain properties belonging to Aldecoa & Company?

A. How do you mean offer them?

Q. Offer to make an assignment to the bank of certain properties of Aldecoa & Company,—goods, credits, properties?

A. The only one, as I remember, was the Pasay Estate Shares, on the 14th and 30th of August, 1907.

Q. And, did the bank accept that assignment which you made?

A. Yes, sir.

Q. In what form was that assignment made?

A. Hypothecated to the bank in writing; escritura.

Mr. Fisher: We move to strike out preceding answers and questions in which the witness testifies to the intents of the document and its effect.

327 Q. The question is, did the bank apply the value of those shares to the partial payment or extension of Aldecoa & Company's debt to the bank?

Mr. Fisher: Objection: 1st, as leading; second, on the ground that it calls for an answer as to the intent of a written instrument by which the shares in question appear to have been transferred or hypothecated to the bank.

Q. Do you know what application the bank made of the value of these shares of the Pasay Estate Company?

A. It appeared in the dividends as paid in to them as received from the managers of the Pasay Estate, paid in to the credit of Aldecoa & Company.

Mr. Haussermann: You mean, the dividend was applied to the credit of Aldecoa & Company?

A. Yes, sir.

Mr. Miranda:

Q. Can you tell us, according to the books of Aldecoa y Company, in the years 1896 and following, if Aldecoa & Company were debtors or creditors of the Hongkong Bank?

Mr. Fisher: Objection as irrelevant and immaterial.

The Court: Received subject to objection.

Mr. Fisher: Exception.

A. In '96 I don't know; in '97 they were creditors of the Hongkong Bank and some following years. This contract began
328 on the 1st of January, 1897, the present contract with Aldecoa & Company, and finished on 31st of December, 1906; this contract of partnership.

Q. Can you tell us, according to the balances and inventories appearing in the books of Aldecoa & Company, as to what year were Aldecoa & Company, creditors of the Hongkong Bank?

Mr. Fisher: The same objection, as irrelevant, and immaterial.

The Court: The same ruling.

Mr. Fisher: Exception.

A. Up to the year 1901.

Mr. Fisher: All this line of testimony is objected to, for the same reason, that it is irrelevant and immaterial.

The witness Urquhart was here temporarily excused from the stand, in order to present a witness for plaintiff.

RAFAEL DEL PAN, a witness for plaintiff, here called to the stand, and first duly sworn, testified as follows:

Direct examination by Mr. Fisher:

Q. Name, address and occupation.

A. Rafael del Pan Member of the Code Committee; calle Aviles, 319, Manila.

329 Q. Are you familiar with the laws of the Kingdom of Spain, and if so, state in what your qualifications consist.

Mr. Miranda: It is admitted that Mr. Del Pan knows thoroughly the Spanish laws, and it is admitted further that Mr. Del Pan is a graduate of the University of Madrid, and Doctor of Laws of that University, and was qualified by his knowledge of law to practice in the Kingdom of Spain.

Mr. Fisher:

Q. Can you tell us what was the law in force in the Kingdom of Spain in the year 1903 with respect to the power of parents to emancipate their minor children?

Mr. Miranda: Objection as immaterial and irrelevant.

Mr. Sanz: I wish to offer the same objection.

The Court: Received subject to objection.

Exception on the part of the defense.

A. Practically the same rules were in force as those which are embodied in the Civil Code now in force in these Islands, but without the modifications in that Civil Code which have been introduced in it in the Philippine Islands since the change of sovereignty by the

various acts of legislation of the Philippine Commission, and subsequently by the Philippine Assembly.

330 Q. Please examine this volume which I show you and which purports to be a copy of the Civil Code, and indicate to us the articles of that Code relating to emancipation, which were in force in Spain in the Year 1903?

A. Article 167, second paragraph of the Civil Code, provides for the termination of the *patria potestad* by means of emancipation. Article 314, in connection with the article just referred to, provides the manner by which the emancipation may be effected; and these methods of emancipation are: The marriage of the person to be emancipated; he coming of age; and by grant of concession of the father or the mother exercising the parental authority or *patria potestad*. And articles 315 to 319 both inclusive, determine the effects of emancipation. There are other provisions apart from these which I have just referred to, and which are those directly applicable to the matter, others scattered through the law which incidentally bear upon the matter.

Q. According to the law in force in the Kingdom of Spain in 1903, under what circumstances was the mother intitled to exercise parental authority, or the *patria potestad* as it was called in the Spanish law?

A. The *patria potestad* is exercised by, and corresponds to the mother upon the death or incapacity of the father.

331 Q. Is the exercise by the mother of the power of *patria potestad*, in the law in force in Spain in 1903, over her minor children, absolute and unqualified?

A. Yes, sir; so absolute and unqualified that the power invests in the mother immediately upon the death of the father of the children, without the necessity of any formal declaration. Before the Civil Code was enacted in Spain the mother was entitled to the guardianship of the persons and property of her minor children very much as she is under the law now in force in the Philippine Islands, but this was changed by the provisions of the Civil Code which conferred upon her the *patria potestad* upon the death of the husband.

Q. Article 9 of the Civil Code, now in force in the Philippine Islands, reads as follows: "Las leyes relativas a los derechos y deberes de familia, o al estado, condicion y capacidad legal de las personas, obligan a los espanoles aunque residan en pais exgrangero." Can you inform us whether or not this provision or a similar or identical provision was in force in the Kingdom of Spain in the year 1903?

A. According to my recollection, identical.

Q. Under the laws in force in the Kingdom of Spain in 1903, up to what time were children subject to the *patria potestad*?

332 How long were they so subject to the *patria potestad*? In other words, when did the *patria potestad* cease?

A. On arriving at 23 years of age; or, that is to say, the limit of minority; or, in case of emancipation by concession of the father, or in his absence or defect by the mother, after the child had reached the age of 18 years.

Q. According to the law in force in Spain in the year 1903, can

you tell us at what age Spanish subjects were authorized to engage in commerce, or acquired capacity to engage in commerce and commercial transactions?

A. The Commercial Code was promulgated and written before the Civil Code, so that there are certain discrepancies between the two, and furthermore it might be considered that the Civil Code modifies certain articles of the Code of Commerce. The rule established by the Code of Commerce was that capacity to engage in trade was acquired as soon as a person reached the age of 21 years, or as soon as he ceased to be subject to the *patria potestad*; that authorizing emancipation and the termination of the *patria potestad* by that means at the age of 18 years, the provisions of the Code of Commerce, according to which the exercise of trade might
333 validly be undertaken, must be deemed to be thereby modified.

Cross-examination by Mr. Miranda:

Before commencing my cross-examination of Mr. Del Pan I desire to make it appear of record that my doing so is not to be interpreted as a waiver of the objection I have made to the admission of the testimony given by him.

Q. According to your last answer, Mr. Del Pan, if I am not mistaken, it is your opinion that a person 19 years of age could enter into commerce provided he were emancipated by his parents, according to the Spanish law?

A. Yes, sir. For me there is no doubt on this point a minor child, as a general principle, has full capacity to contract and obligate himself; but the law imposes on the exercise by him of this power and capacity certain restrictions based upon the belief of the legislator that the lack of development of the minor would prevent him from exercising this capacity wisely. Thus when by emancipation granted by the father or by the mother, of necessity, capacity is conferred upon the minor, in which event he has full power to do anything except those particular acts which are express provisions of the Code still unauthorized. Consequently I am of the opinion that
334 after emancipation the minor has capacity to do anything except those particular matters and things which are still expressly prohibited by the terms of the law.

Q. (Question repeated.)

A. Yes; sir; because he would have complied with the conditions of article 4, paragraph 2, of the Code of Commerce, being no longer subject to parental authority, or subject — the authority of the husband.

Q. What, under the Spanish law, were the requisites necessary for a valid emancipation, a voluntary emancipation by the father or mother?

A. That the minor should have attained at least 18 years of age, that the emancipation be made in proper form, and that the minor should consent thereto.

Q. In what form was it necessary that the emancipation should be effected?

A. By the execution of a public instrument, or statement made in the presence of the municipal judge.

Q. Was it necessary that the public instrument should be executed in any particular form in order that it might be valid?

A. The usual forms followed in the execution of instruments of that character. I don't remember any special requisite as to formality in the execution of that particular class of public instrument.

335 Q. Do you recall whether it was one of the former requirements or requisites of these instruments that the notary public before whom such an instrument was executed, should certify or bear witness to the facts of the possession by the person executing such instrument, of the necessary legal capacity for the performance of such an instrument?

A. No; what the notary public was required to state, and what the custom was, that he was unaware of any fact from which lack of capacity might be inferred. The notary was not authorized to pass upon or determine the question of the possession of such capacity, but simply was guided by the statements made to him by the persons executing the instrument and simply stating in the formal instrument that nothing to the contrary was known to him with respect to such capacity.

Q. What are the effects of the patria potestas under the Spanish law with respect to the property of the minor subject to such parental authority?

A. What kind of property?

Q. Real property belonging to the minor personally; property which had been acquired for good consideration and by gratuitous conveyance to such minor.

336 A. The parent in whom was vested the power of patria potestas had, under the law, the legal power to administer the property of the minor subject to such parental authority. This was a general principle. But with respect to the property earned by an unemancipated minor by his own work and efforts or industry, the law made a difference between the case where the minor was living in company with the father or mother exercising parental power, and those in which he was separated. In the first case the usufruct of such property was enjoyed by the person exercising such parental authority; and in the second case the minor was treated with respect to such property as though he had been emancipated. This was merely a temporary advantage, but while it continued he was not only competent to keep for himself property so acquired by his earnings, but to administer such property.

Q. Was the parent empowered to exercise the patria potestas or parental authority, authorized thereby to dispose of the real property of the child under such parental control or authority without any exception or limitation?

A. There was no unlimited power to make such disposition.

Q. What were the limitations then?

A. For the purpose of mortgaging or selling such prop-

337 erty, it was necessary that a judicial proceeding be had for the purpose of determining the necessity or convenience of such mortgage or sale of property.

Q. Before whom was this proceeding conducted?

A. Before the judge of the domicile of the parties.

Q. Under the Spanish law could a mother exercising the power of parental authority over her child validly enter into a contract in her own name and on their behalf make them member of a mercantile partnership?

Mr. Fisher: Objection, as not proper cross-examination.

The Court: The question may be answered as pertinent to the year 1903.

Mr. Fisher: Also objected to on the ground that it is not proper cross-examination, and upon the further ground that there is nothing in evidence relating to the execution of such a contract by any of the parties to this suit subsequent to the termination of the Spanish administration in these Islands; and upon the further ground that counsel propounding the question has admitted in open court that the hypothetical question relates to the contract of partnership by which Aldecoa & Company was formed, and which was executed in Manila in the year 1896.

338 The Court: Objection overruled.

A. You ask if she could lawfully enter into a contract creating a mercantile partnership on her own behalf and on behalf of her children? Yes, sir.

Q. Do you mean that such a contract would be binding upon her and her children?

A. Unquestionably; unless the contract should be found to be void by reason of fraud, violence, intimidation, error, etc.

Q. Are you of the opinion, then, that the mother under those circumstances could enter into such a contract for herself and her children, without obtaining any authorization other than her own authority?

A. A mother invested with the power of patria potestas?

Q. Yes, sir.

A. I am of the opinion that so long as she did not undertake to convey away or hypothecate any real property belonging to her children that such a contract would be binding and valid. I would like to explain myself a little further, if the court will permit. We must not lose sight of the fact that in matters relating to capacity, the power to exercise capacity of the Civil Law of Spain is based
339 upon the assumption that capacity exists without restriction, and that it may be exercised without limitation in the absence of any express provision imposing a limitation upon their exercise. A person is invested with capacity from the moment of birth, with the exception of those acts concerning which the law restricts this capacity. The father invested with the power of patria potestas, or the mother in his absence or default of the father, supplies the deficiency of the minor for the purpose of exercising the capacity which he possesses. The father, or the mother, as the case may be,

also has full power to do those things, except in so far as that power may be specifically limited by the law; and the law presumes the right to exercise the power in all its fullness, except in so far as it may be specifically limited.

Q. Is it not a fact that one of the express limitations established by the law upon the power of the father or the mother to exercise the patria potestas with respect to the number of children subject to the parental authority was that they could not alienate or incumber real property of the minor subject to such authority, without first obtaining judicial authorization to do so?

340 A. Yes, sir; judicial authority was necessary, based upon a showing of the convenience or necessity of such alienation or incumbrance.

Q. In reply to one of the questions addressed to you on direct examination, you stated, I believe that by the act of emancipation by voluntary concession a minor became vested with the necessary capacity for the exercise of all acts relating to civil personality. Am I correct in my recollection of what you said?

A. Yes, sir; subject to the general rule; that is, that an emancipated minor becomes vested with the authority to perform any civil act, except those which are expressly limited by the law.

Q. And, is it not a fact that one of the limitations which the law imposes upon an emancipated minor was, that notwithstanding the fact of emancipation he could not dispose of his property, until he attained his majority, without the consent of the father or mother emancipating such minor?

A. He could dispose of his property in any way, except by expressly conveying it away or incumbering it; but for the purpose of these acts, namely, alienation or incumbrance of property, it was necessary for him to have the assistance (attendance) of the parent.

341 Q. Do you mean the attendance of the parent only or the attendance of the parent and his participation in the act and the consent also?

A. The attendance with consent.

Q. Under the Spanish law in force in Spain in the year 1903, could a mother or father give their consent to an act of alienation or mortgage of property of an emancipated minor for the benefit of the father or mother who gave the consent?

A. I know of no rule which limits or which would prevent an act or contract of conveyance or incumbrance of property from being valid when executed by an emancipated minor with the consent and attendance of the person by whom the parental power had been exercised. When I say that I know of no such rule, I should say, however, that there is no such rule in existence, referring of course, to the Spanish law.

Cross-examination by Mr. Sanz:

Q. According to the Spanish law in force in Spain in 1903, was the power of a parent to be present at and give consent to such acts

of alienation and conveyance as those to which you have referred, something inherent in the patria potestas or guardianship?

342 A. No, sir; the person exercising the patria potestas or power of guardianship over a minor had no authority to convey away or encumber the real property of such minor without judicial authority; so that this power was not inherent in the patria potestas; after the minor had been emancipated after attaining 18 years of age, or after he had attained his majority or acquired capacity to control and dispose of his personal property as fully as though of age; but with respect to the alienation or encumbrance of real property, he was subject to the legal restriction of the requirement of the consent of the father, or in his defect, the mother, or of the guardian; not as a power inherent in the patria potestas pertaining such parents, because they no longer possessed it under those circumstances, but as an act of special precaution or prudence on the part of the law-maker, similar to the same spirit of prudence under which the law-makers require judicial authorization for the alienation or encumbrance of such property before the emancipation of the minor. The rule is, as I stated before, full power and capacity in all matters except those in which particular restriction or limitation is imposed by the law.

343 Q. If such a power was not inherent in the patria potestas, it was at least a power or authority inherent in the father, mother or guardian, as such, was it not?

A. Yes, sir; a restriction imposed by the legislator in the belief that it was beneficial to the emancipated minor to be subject to such restriction.

Q. Are the powers corresponding to a father or mother as such personal and incapable of delegation under the Spanish law in force in 1903 and following years?

A. If by your question you mean to raise the issue as to whether such powers can be absolutely delegated to another person my answer would be in the negative, because the powers are inherent in the capacity of the father, mother or guardian, as the same may be. If you ask whether the authority exists to delegate the exercise of these powers for any particular purpose my answer is that it unquestionably does, because, any faculty or power of that kind can be transferred by delegation. For example, to illustrate, the father or mother or guardian would be without authority to transfer their power in general, by saying that,—It is my wish henceforth that the parental authority be exercised by so and so; because such an act would be illegal and void. But the father or mother or

344 guardian could authorize another person, in the absence of such father, mother or guardian, to give consent in their stead.

Q. Give consent in any particular way, or in general terms?

A. The authority could be given in general terms.

Q. This upon the ground that all powers are capable of delegation?

That is, the exercise of such powers may be delegated.

Q. Is it not a fact that the power to delegate a right to give con-

sent to acts of that kind is as intransferable as is the condition or status itself, and as is the authority of a husband to give consent to contracts to be entered into by his wife?

A. I will answer that by making the same distinction as that which I pointed out in my previous answer. The husband could not lawfully transfer to another his marital authority; but on the other hand it is unquestionable that the husband can delegate by proper instrument to his wife herself the power to enter into contracts which require his consent; and also it is unquestionable that he can confer a power of attorney upon another person to give his consent in his name to such acts to be performed by the wife.

345 The witness, URQUHART, recalled to the stand for defense further testified as follows:

A. I wish to rectify an answer that I made. I said that there was a credit bound to the books of the Hongkong Bank,—in 1901. It ought to have been in 1899. In 1901 there seems to be two accounts, one of credit balance and one of debit balance.

Mr. Miranda:

Q. In 1900 what was the balance?

A. P266,357.31, on the 31st of December 1900; a debit balance.

Q. From Aldecoa & Company to the Bank?

A. Yes, sir.

Q. Please state according to the books of Aldecoa & Company, whether in the year 1897, any sum of money was paid into the bank by the sons, Joaquin Zoilo and Cecilia Ybanez y Aldecoa?

A. Yes, sir.

Q. State what amounts were paid in by each of these brothers?

A. The heirs of Don Zoilo Aldecoa put in as credit on the 31st of December, 1897,—Joaquin P67,274.80½; Zoilo, the same amount, P69,274.79½.

Mr. Haussermann: That is credit balance in his favor?

A. Yes, sir; Cecilia, P43,605.39.

Mr. Miranda:

346 Q. How much money was put in by Joaquin Ybanez y Aldecoa in the year 1897?

A. It appears at the end of the year as P73,147.99.

Mr. Fisher: All you know about it is what appears in the book, isn't it, Mr. Urquhart?

A. Yes, sir; that is what appears in the book.

Mr. Miranda: The attorney for the defendants offers to present in evidence a copy of the account current with interest, of the amounts put in by Joaquin, Zoilo and Cecilia Ybanez y Aldecoa.

Cross-examination by Mr. Fisher:

Q. Mr. Urquhart, the contract to which you refer in your testimony with respect to the Pasay shares as the hypothecation to the bank, this is the document, a copy of which is attached to the complaint as Exhibit D, is it not?

A. Yes, sir; that is the final one. There were two done; one on the 14th of August.

Q. It is a fact, is it not, that this Exhibit D is the last agreement which has been entered into between Aldecoa & Company and the plaintiff bank in regard to the Pasay shares concerning which you have testified,—referring to Exhibit D filed with the complaint?

A. Yes, sir.

Q. And, when you state that these Pasay shares had been assigned to the bank, you referred to the effect of this document, Exhibit D, did you not?

347 A. Yes, sir; handed it over to them as additional security.

Q. Referring to the testimony about the Zobeldia credit,—is it not a fact that frequently the representatives of the Hongkong Bank have conferred with you about time to be allowed that debtor and other debtors referred to in Exhibit G; in other words, that no extensions have been given to those provincial debtors with the exception of M. Achaval, whose credit was assigned out and out, except, with your consent as liquidator?

A. I had nothing to do with the arrangement of terms with Zobeldia; it was done entirely by the bank.

Q. You mean to say that your consent was not requested and obtained, Mr. Urquhart?

A. No, sir; I don't remember giving it. I remember quite to the contrary; as far as the escritura is concerned.

Q. Please examine this document, marked Exhibit 1, of the defense, which has been identified by you,—was that between the bank and Zobeldia?

A. Yes, sir.

Q. That contract is dated in 1907, is it not?

A. Yes, sir.

348 Q. Is it not a fact that subsequent to the execution of that document the Hongkong Bank asked and obtained your consent to arrangements with Zobeldia as to the time to be allowed him for paying off his indebtedness and the amount of the payments to be paid annually by him?

A. Do you refer to the escritura of the 13th of August?

Q. I am not referring to any escritura in particular. What I am trying to find out from you is, if it is not a fact that when these provincial debtors, and Zobeldia in particular, have asked for extensions of time for the payments of their indebtedness, that the matter has been referred to you as liquidator of Aldecoa & Company, and that you have consented as such to the extension of such time whenever it has been granted?

A. I think so. I did once as to Zobeldia.

Q. Look at Plaintiff's Exhibit CC and state if you recognize that as a letter written by you?

A. Yes, sir; I wrote that myself.

Q. Can you state any instance in which an extension of time has been granted to any debtors of Aldecoa & Company by the Hongkong Bank without the consent of Aldecoa & Company and by yourself as liquidator, leaving out of consideration the Achaval credit which

has been assigned absolutely to the bank and in which Aldecoa & Company is no longer interested?

349 A. The Achaval assigned credit. Zobeldia is the only instance in which the bank, as far as I remember just now, in which the bank gave plazos.

Q. And, that was with your consent?

A. No, sir; I refused to sign that escritura. I Agreed afterwards, in 1909.

Q. So that you agreed on behalf of Aldecoa & Company to permit Zobeldia to pay off his indebtedness at the rate of P3,000 per quarter, did you not?

A. Yes, sir;

Mr. Fisher: I offer in evidence this letter, Exhibit CC, in connection with the testimony of this witness.

Q. Please examine again this document in evidence as Exhibit G, and more particularly the statement contained on page 3 of that document, of the debtors of Aldecoa & Company, whose debts the plaintiff bank was authorized to collect and apply to the satisfaction of Aldecoa & Company's indebtedness to the bank; and state, if you can, whether the enforcement of those claims by suit was placed in the hands of some firm of attorneys to represent Aldecoa & Company, after the execution of that document?

A. As far as I remember, I think the bank put it in the hands of Messrs. Haussermann & Cohn; and Mr. Aldecoa and I went
350 around and begged that it should be put in the hands of Messrs. Sanz & Opisso, because you would not do it cheap enough.

Mr. Haussermann: And because we all agreed that they knew the debtors better than we did, and being Aldecoa & Company's attorneys that they would be better able to handle it?

A. Yes, sir; something like that.

Mr. Miranda:

Q. How did you make the account of the liquidation of Aldecoa & Company, a copy of which was presented here before the court the other day?

A. I don't know what you refer to; I don't remember making any. The current account of the Hongkong Bank?

Q. Yes.

A. I have taken it from the books.

Q. The data which you entered in the book, where did you obtain that?

A. Chiefly from advices from the Hongkong Bank; provincial debtors paid in to Aldecoa & Company and hand/ed in to the bank afterwards.

ZOIL0 YBANEZ Y ALDECOA, a witness for defendant, being first duly sworn, testified as follows:

351 Direct examination by Mr. Miranda:

Q. Please state your name, address and occupation.

A. Zoilo Ybanez de Aldecoa; merchant; Cortabitarte 5, Malate.

Q. Did you ever sign at any time, as attorney-in-fact of Aldecoa & Company?

A. No, sir.

Q. In one of the minutes of Aldecoa & Company, and which has been presented in evidence on the part of the plaintiff, there appears a resolution by which you were authorized to sign per procuracion for Aldecoa & Company. Was that resolution ever carried into effect; that is to say, have you ever signed per procuracion for Aldecoa & Company?

A. No, sir; never.

Q. Did you ever execute a power of attorney in favor of Mr. Jose Ma. Ybanez y Aldecoa in order to carry out a contract which is marked here as Exhibit V?

A. I don't remember ever having executed one.

Q. Have you ever signed or ever executed a power of attorney in favor of Jose Ma. Ybanez y Aldecoa directly?

A. No, sir.

Q. Have you ever had any knowledge of this contract, Exhibit V, before this time?

352 A. I don't remember.

Q. Where were you on the date of that contract?

A. I was in Europe; I don't know just where, but I was in Europe.

Q. In what parts of Europe have you been?

A. In various parts of Spain, France and Switzerland.

Cross-examination by Mr. Fisher:

Q. Do you remember ever executing a power of attorney in favor of your mother, Dona Ysabel Palet?

A. I don't remember; I am not positive.

Mr. Miranda: I offer in evidence the escritura marked Exhibit 2 of the defendants and cross complainants, Joaquin, Zoilo and Cecilia Ybanez y Aldecoa, executed in Manila by the managers of Aldecoa & Company in favor of Ysabel Palet, acknowledging receipt of the amounts of money which this lady placed in the partnership of Aldecoa & Company in the name of her three children, dated 18th February, 1897.

Mr. Miranda: I also offer in evidence as Exhibit 3 of the defendants and cross complainants, a printed copy of the bill of exceptions, and copy of the decision in Civil Case No. 6749 of the Supreme Court, to show that the case to which this bill

353 of exceptions refers is pending before the Supreme Court.

Mr. Fisher: Plaintiffs admit that the document of which defendants' exhibit 2 purports to be a copy, was executed on the date it bears, and by the party purporting to execute the same; but object on the ground that it is irrelevant and immaterial.

Admitted subject to the objection.

Exception on the part of the defense.

Mr. Fisher: Plaintiffs admit that defendants' Exhibit 3 is bill of exceptions upon which suit referred to therein is now pending in the Supreme Court; but offer the same objection, that it is irrelevant and immaterial.

The same ruling by the court.

Exception on the part of the defense.

Mr. Miranda: I offer in evidence the bill of exceptions in Civil Cause No. 7889 of the Supreme Court, in order to show that it is *litis pendens* between the Hongkong Bank and Joaquin and Zoilo Ybanez y Aldecoa, in regard to the validity of the mortgage which plaintiff seeks to foreclose in the present case.

Mr. Fisher: Plaintiffs admit that defendants' Exhibit 4 is a copy of the bill of exceptions upon which the case referred to
354 therein is now pending in the Supreme Court.

It is understood and stipulated by counsel for plaintiffs and defendants that the only purpose for which defendants' Exhibits 3 and 4 are offered is to support the allegations of the defendants that there is another suit pending, made by defendants' answers.

Mr. Miranda: I also offer in evidence defendants' Exhibit 5 the decision of this court in cause No. 5098.

Mr. Fisher: Plaintiffs admit that defendants' Exhibit 5 is a true copy of its original, but object to its admission as evidence in this case, upon the ground that it is incompetent, irrelevant and immaterial and *res inter alios acta*; this exhibit being a judgment rendered in a suit in which the present plaintiff was not a party.

The Court: Ruling reserved.

Mr. Fisher: Exception.

Witness SILVA, of plaintiffs, recalled to the stand for further cross examination, testified as follows:

Cross-examination by Mr. Miranda:

Q. State the balance which Aldecoa & Company owed
355 the bank, not including the interest, on the 31st of December, 1906.

A. What I have is balance, including interest of the previous six months.

Q. Can you not tell us at this time?

A. No, sir.

Q. How were the interests liquidated?

A. The interest was calculated from the balance left.

Q. Were they not liquidated quarterly?

A. They were liquidated with Aldecoa & Company semi-annually.

Q. Is it not true that there was a time that the bank calculated this interest quarterly? Look at the first account of January, 1907?

A. Yes, sir; on the 31st of March, 1907.

Q. On the 20th of April, 1907, is it not true that interest was included and the balance, that is the interest corresponding to the first quarter of the year?

A. No, sir.

Q. On the 31st of March?

A. Yes, sir.

Q. And, in June?

A. On the 30th of June.

Q. And, up to what time was the bank liquidating interests every quarter?

A. Up to the 31st of December, 1907.

356 Q. And, from that date and subsequent to that date how were the interests liquidated,—semi-annually?

A. Yes, sir; semi-annually.

Q. Why?

A. I don't know.

Q. Is there any difference in calculating the interest quarterly or semi-annually?

A. Yes, sir.

Q. How does it affect the account?

A. Naturally it affects the interest by collecting three months and six months, because in collecting three months the interest is charged up to the account.

Q. I would like to know whether the bank credited Aldecoa & Company for the interest improperly charged due to the fact of calculating interest every three months?

A. Yes, sir.

Q. Can you show me the entry?

A. October 22, 1907.

Q. The entry reads as follows: Interest *enduly* charged from January until June last?

A. No, sir.

Q. What does it say?

A. To refund interest 7 per cent on P8,251.03 debit 31 of March instead of 30th of June.

357 Q. Was that the only refund of interest made to Aldecoa & Company from its origin in February 1906?

A. There is another entry: By entry reversed of the debit interest charged on 30 September P8,139.88.

Hearing continued to Wednesday, February 15, 1912.

358 Session of Thursday, February 15, 1912.

Witness SILVA, recalled to the stand as a witness for defense, testified as follow-:

Direct examination by Mr. Miranda:

Q. Have you the account of Aldecoa & Co. from February, 1906, to December of that year?

A. Yes, sir.

Q. Referring to that account, can you tell us what was the balance owed by Aldecoa & Co. to the Bank on the 31st of December, 1906, without including interest?

A. Do you mean to say, without interest for the whole year?

Q. Yes; if possible.

A. P481,824.67.

Q. Can you tell us in what form the interests were liquidated during this period from February, 1906, up to December of the same year?

A. Quarterly interest.

Q. Do you know if there was made in that account any rectification or amendment in the manner of calculating the interest during that same time?

A. No, sir.

Q. Do you mean that no amendment was made?

A. No, sir.

359 Q. No,—that it was not made?

A. That it was not made.

Q. The rectification of the manner of calculating interest of which you spoke in the former hearing, was made with respect to the liquidation of interest after the 31st of December, 1906.

A. Yes, sir.

Q. So that the only rectification in the liquidation of interest has been made upon the interests calculated after the 31st of December, 1906, but not before that time?

A. Yes, sir.

Cross-examination by Mr. Haussermann:

Q. The rectification of the error in interest charges was made for what year?

A. For the year 1907.

Q. State whether or not you have made any calculation of the amount of credit to which Aldecoa & Co. would be entitled to to-day in order to rectify the error in 1906 in charging the interest quarterly instead of semi-annually?

A. Yes, sir.

360 Q. To what credit would Aldecoa & Co. be entitled to as of to-day in order to correct the account by reason of the error in calculating interest in 1906 quarterly instead of semi-annually?

Mr. Miranda: I object to the question as not being the proper place for this question.

The Court: He may answer.

Mr. Miranda: Exception.

A. Aldecoa & Co. would be entitled on the 31st December, 1911, to P422.62 credit in order to correct the interest charged quarterly instead of semi-annually in the year 1906.

Q. Have you that calculation here?

A. Yes, sir.

(Witness hands counsel documents.)

Q. Now, what would be the amount due the bank from Aldecoa & Co. after making this correction?

A. Aldecoa & Co.,—the account would be a debit balance of P364,-

751.97; that is, the liquidation account, and the other account, liquidated account, stands as of date, P13,460.55.

Q. Making the total balance——

A. Totalling P378,212.52, with interest charged up to 31 December, 1911, only.

Direct examination by Mr. Miranda:

Q. Can you tell us the total amount of interest charged to Aldecoa & Co. from the 23 February until the 31 December, 1906?

A. P30,140.22.

Q. Can you give us the dates when the interest were charged during that period of time and the amount of each?

A. 31 March, P3,349.90. This is part of the quarter, as calculated 21 February to 31 March. 30th of June, P8,754.99. 30th September P8,890.36. 31st December, P9,144.97. Totalling P30,140.22.

Q. If the liquidation or calculation of interest during this time had been made semi-annually, what would have been the total amount of interest?

A. There would be a difference of P299.59.

Examination by Mr. Sanz:

Q. Is that the only rectification made in that account,—the rectification as to interests?

A. This is a calculation. There has been no correction made yet.

Q. Other than that calculation you have made no other in regard to the credit of Achaval?

A. Yes, sir.

Mr. Haussermann:

Q. Will you prepare the necessary cross entries, necessary to correct the account of Aldecoa & Co. and insert the same in Exhibit P of this cause?

A. Yes, sir; I will.

362 Mr. Haussermann: With the permission of the court you may retire from the stand until you make the necessary entries.

It is stipulated that it is a fact that on the 15th day of May, 1908, the books of Aldecoa & Co. in liquidation showed a balance of P155,197.31 as due the defendants, Joaquin, Zoilo and Cecilia Ybanez de Aldecoa, this being the balance still due them from Aldecoa & Co. upon the amount paid into their credit by their mother, Dona Ysabel Palet at the date and under the circumstances shown in defendants' Exhibit 1.

But the plaintiffs, the Hongkong & Shanghai Banking Corporation, object to the consideration of the facts embraced in this stipulation upon the ground that they are irrelevant and immaterial.

Ruling upon the objection reserved.

Exception reserved by both parties, in case of unfavorable ruling.

Mr. Miranda: I rest the case for my clients.

Proofs of Defendants Aldecoa & Company.

It is stipulated that the testimony of the witness Martin de Achaval, called on behalf of the defendants, Aldecoa & Company, was taken by deposition before the Clerk of this Court, on the
363 19th day of January last, after proper notice to opposing counsel, that they were present at the taking of such deposition, and that the witness is now absent from the city of Manila.

Mr. Sanz: I now offer in evidence the transcription of the deposition of the witness Achaval referred to in the foregoing stipulation, identified by the signature of the stenographer and the Clerk of this Court, together with the Exhibits attached thereto.

Mr. Fisher: Counsel for plaintiff corporation waived the reading of the deposition of Achaval by question and answer, but objected to its consideration by the court upon the ground that the matters testified to by said witness are wholly irrelevant and immaterial, and that the documents identified by the said witness in the court of the taking of the deposition, offered by Aldecoa & Company as part thereof, are all irrelevant and immaterial.

Ruling reserved by the Court.

Exception reserved for both parties, in case of an unfavorable ruling.

Mr. Fisher: It is expressly stated by counsel for plaintiff corporation that no objection is made to the deposition because it is
364 not signed by *by* witness, and it is stipulated that the transcription of the deposition made by the official stenographer is correct.

Mr. Sanz: On behalf of Aldecoa & Co. I offer in evidence as Exhibits X-1 to X-7, inclusive, simple copies of letters and telegrams addressed by the plaintiff corporation to various provincial debtors of Aldecoa & Company.

Mr. Fisher: Plaintiff corporation admits that the documents referred to as Exhibits X-1 to X-7, inclusive, offered by Aldecoa & Company, are true copies of their originals, and that they were addressed by the bank and its officers at the times thereon indicated, and to the persons appearing as the addressees; but objects on the ground that they are irrelevant and immaterial; no objection being made to the documents on the ground that they are not the best evidence.

The witness, WILLIAM URQUHART, recalled to the stand as a witness for the defendant, Aldecoa & Company, testified as follows:

Direct examination by Mr. Sanz:

Q. How long since you have been working with Aldecoa
365 & Company in liquidation?

A. Since the 2 January, 1907.

Q. Before that time you were never in the house of Aldecoa & Company?

A. Yes, sir; since 1901.

Q. Were you familiar with the accounts of Aldecoa & Company with their provincial debtors?

A. Yes, sir.

Q. Did you know the kind of transactions they had with Achaval, Zobeldia, Viuda e Hijos de F. Escano, Francisco Rodriguez, Caranceja y Portilla, Manuel Veloso, Acordagoicoechea Hermanos, and Miguel Pelaez?

A. Yes, sir; they all consigned hemp to Aldecoa & Company for sale and received rice and other articles from Manila.

Q. Can you tell us what commissions Aldecoa & Company collected from each of these persons annually?

Mr. Fisher: Objection, as irrelevant and immaterial.

Received subject to objection.

Exception reserved.

A. That is very difficult to say. It depends upon the price of hemp. But from Zobeldia in the year 1906 we used to collect about P20,000 a year, more or less. Achaval, three or four thousand pesos, only. Escano, about P20,000 I think. Veloso would be four
366 or five thousand pesos. Acordagoicoechea would be about the same. Pelaez would be six or seven thousand pesos, I think. Rodriguez and Portilla very small quantities: two or three thousand pesos a year each.

Q. Since when did these persons cease consigning their products to Aldecoa & Co.?

A. Achaval in the beginning of 1907; Zobeldia, he shipped to the liquidator in 1907 some two or three hundred bales a month,—about 3,000 bales in the year; when he used to ship over 20,000 bales; Escano, of course, paid up, and didn't consign anything after that. Acordagoicoechea and Pelaez could not go on without credit.

Q. Do you know why Zobeldia cut down his consignments?

A. I believe he was shipping to Warner, Barnes & Company.

Q. You don't know positively?

A. I know that he has sent consignments, but I don't know the quantity.

Q. And, at the same time that he sent you those small consignments?

A. Yes, sir.

Q. Do you know why he cut down his consignments to Aldecoa & Company, and began to make consignments to Warner, Barnes & Company?

367 A. No; I don't know. He said he was going to send all his consignments to Aldecoa & Company.

Mr. Haussermann: Objection to conversation between Zobeldia and himself.

The Court: Sustained.

Mr. Sanz: Exception.

Mr. Sanz: I offer in evidence Exhibit X-8, a letter written by Celestiano Zobeldia to the Hongkong Bank.

Mr. Fisher: It is admitted that the plaintiff bank received from

Zobeldia the original of the letter of which Exhibit X-8 purports to be a copy on or about the date which it bears, but it is objected to on the ground that it is irrelevant and immaterial.

Ruling reserved.

Exceptions reserved for the parties.

Cross-examination by Mr. Fisher:

Q. Did you testify that you did not know why it was that these provincial debtors had ceased consigning to you?

A. On account of stopping payment of Aldecoa & Company, and not being able to get further credits.

Q. You were unable to continue to furnish them credit?

A. The Hongkong Bank,—all the money that came in
368 was paid into the Hongkong Bank as it came in, and there was no money to carry on business.

Q. And Aldecoa & Company at that time was in liquidation, was it not?

A. Yes, sir.

Q. And this failure on the part of your provincial debtor to make consignments, to which you have testified, took place after your firm went into liquidation?

A. Yes, sir; of course, the Hongkong Bank got all the money that came in, and all went out, and these firms could not carry on business. About the 20th of January the Hongkong Bank came to an arrangement to make the liquidation slow, and give time to people to pay.

Q. They are still paying?

A. Still paying a little, but every day less.

Cross-examination by Mr. Miranda:

Q. In accordance with your authority and power as liquidator, you could continue in relations with debtors of the house of Aldecoa & Company, notwithstanding the liquidation, for the purpose of continuing the collection of the debts of the provincial debtors?

Mr. Fisher: Objection, on the ground that the resolution by which Mr. Urquhart was appointed liquidator is in evidence,
369 and that is the best evidence of its contents.

The Court: Sustained.

Q. According to the authority you had for the liquidation of Aldecoa & Company, could you continue your relations with the provincial debtors, continuing the consignments from these parties to the house of Aldecoa & Company for the purpose of collecting their debts? Did you continue negotiating with those parties?

A. Yes, sir.

Q. In what way?

A. In the usual way. They sent hemp up to Manila and it was sold and realized. They all had—at least those who were paying anything, had arranged to pay so much a month, and they continued the business as well as they were able, and paid their monthly or three-monthly payments.

Q. Did the consignors draw on Aldecoa & Company for the amount of the value of the hemp consigned?

A. In 1907 they drew on me for the amounts, for fear,—the hemp was consigned to me,—for fear that some other creditor of Aldecoa & Company might seize the hemp on arrival here.

Q. With what money did you pay those drafts? With the money of the company?

370 A. That of the sales of the hemp consigned.

Q. Did you have any agreement with the bank to facilitate these operations?

Mr. Fisher: Objection, on the ground that it does not appear whether the agreement, if any, is in writing; and if it is, the writing would be the best evidence.

Q. Did you have any agreement with the bank to assist you in these operations?

The Court: Do you know if you had an agreement?

A. I can't answer, yes or no.

A. We had a meeting on the 24th of January, or some days before,—I forgot which,—in which the bank agreed with Aldecoa & Company to liquidate slowly, and we then had an "acta"; it was put down in the "acta" of the firm, that this was agreed upon, and I was given powers to go on liquidating slowly.

Mr. Miranda:

Q. After the 31st day of December, 1906, did the bank continue to furnish money to Aldecoa & Company in order to aid the liquidation?

A. I don't remember,—they loaned P5,000 to Acordagoicoechea to repair a steamer; that is the only time they ever loaned any money, as far as I remember.

371 Mr. Fisher—cross-examination:

Q. You don't claim that the bank entered into any contract with you to furnish any further credit, or that they failed to furnish you credit for the drafts that you had a right to draw?

A. No; they gave me powers to see if I could get P5,000 from the bank, but the bank wouldn't give it. It is all in the "acta."

Redirect examination by Mr. Sanz:

Q. Mr. Urquhart, after the liquidation had begun, did you ever draw any check against the bank that was ever paid?

A. I believe so. I don't recollect, but I believe there were some; there were some checks drawn before the 31st of December that were not paid by the bank.

Q. But, after the 31st of December, when you were then liquidator, did the bank pay any checks drawn by you as liquidator?

A. There were very few. One I remember was the honorarios of Messrs. Rosado, Sanz y Opisso, the attorneys; and this P5,000, I think I drew a check to pay for the repairs of this steamer.

Mr. Sanz: I also offer in evidence copy of the complaint and an-

372 swer in case No. 6814, and the certification of the clerk of the court that the said case is pending presentation of evidence,—pending the presentation of an audit by certified accountant.

Mr. Fisher: Objection, as immaterial, incompetent and irrelevant. Ruling reserved.

Exceptions reserved for both parties.

Mr. Fisher: We offer in evidence Exhibit CCC, copy of a power of attorney executed by the defendant Ysabel Palet, in favor of one Jose Maria Aldecoa; and also as part of it, the powers of attorney executed in favor of Dona Ysabel Palet by the defendants Joaquin & Zoilo Ybanez y Aldecoa.

It is stipulated by and between counsel for plaintiff and defendants in this case that plaintiff's Exhibit CCC is a true copy of its original, and may be considered as of the same effect as though the original had been produced; also that the powers-of-attorney inserted herein and purporting to have been executed by the defendants Joaquin and Zoilo Ybanez y Aldecoa in favor of their mother, the defendant Dona Ysabel Palet, were in fact executed by them in her favor at 373 the time, and on the terms as set forth in the copy of said power included in Exhibit CCC.

It is further stipulated that D. Jose Maria Ybanez y Aldecoa, making use of the substitution of power-of-attorney in evidence as plaintiff's Exhibit CCC, signed the name of Zoilo Ybanez y Aldecoa to the contract in evidence herein as plaintiff's Exhibit V.

The witness WILLIAM URQUHART, recalled to the stand to testify in his own behalf, declared as follows:

Direct examination by Mr. Sanz:

Q. How much do they owe you for wages?

A. About P14,000; and on the other amount, about P21,000.

Q. That was a deposit in the account current that you had there?

A. Yes, sir.

It is stipulated that Messrs. Aldecoa & Company in liquidation owe Mr. Urquhart, the liquidator, the sum of P14,000 as salary, and that Mr. Urquhart is also a creditor of Aldecoa & Co. in the 374 sum of P21,000, due him for money loaned by him to Aldecoa & Company before they went into liquidation.

Mr. Haussermann:

Q. Referring to page 45 of the transcription of the stenographer's notes in this case, I notice that your answer as to what attorneys were employed to collect the debts due Aldecoa & Company from provincial debtors is indefinite. Please state what attorneys were employed to collect those claims?

A. It was Rosado, Sanz y Opisso.

Cross-examination by Mr. Fisher:

Q. You have received from the Hongkong & Shanghai Banking Corporation, have you not, from time to time, statements of the

amounts collected by them from the provincial debtors of Aldecoa & Company?

A. Yes, sir.

Q. Whose debts the Hongkong Bank authorized to collect and apply to Aldecoa & Company's indebtedness?

A. Yes, sir.

Q. Have you any reason whatever to suppose that any amounts whatever have been collected by the Hongkong Bank from such provincial debtors, of which they have not given information?

375 A. No, sir.

Q. Or that any amounts have been collected from such provincial debtors by the Hongkong Bank, or defendants' agents, which have not been credited to Aldecoa & Company?

A. No, sir; I know of none, and have heard of none.

Mr. Fisher: Referring to page 10 of the stenographic report, I find that the stenographer's notes do not contain what I desired to say in offering Exhibit Q. We offer in Evidence exhibit Q as a list of payments made by the provincial debtors.

Cause submitted.

I hereby certify that the above is a true and correct transcription of the stenographic notes taken by me upon the trial of the above entitled cause.

(Sgd.)

CHARLES C. DESELMES,
Official Stenographer.

Manila, P. I., February 26, 1912.

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List of Exhibits.

For Plaintiff:

Exhibits, A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CCC.

For Defendants:

Exhibits, 1, 2, 3, 4, 5.

For Defendants Aldecoa & Co.:

Exhibits, X-1, X-2, X-3, X-4, X-5, X-6, X-7, X-8.

Exhibits and Documentary Evidence.

Plaintiff's Exhibits.

Plaintiff's Exhibits "A" to "G" are those attached to the amended complaint filed by plaintiff on the 31st day of January, 1912.

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8519.

EXHIBIT "H."

Number Nine Hundred and Twenty Five.

In Manila, this thirty-first day of December, one thousand eight hundred and ninety-six. Before me, Don Enrique Barrera y Caldes, Doctor in Canonical and Civil Law, Notary Public of the Illustrious Notarial College of Manila, and a resident of this City, personally appear:

The Most Excellent lady Dona Isabel Palet y Gabarro, widow of the Most Excellent Don Zoilo Ibanez de Aldecoa y Aguirre, of lawful age, landholder, and resident of this Capital, with personal cedula of the first class, number one hundred sixty nine, issued by the Administracion de Hacienda Publica of this Province, on the twentieth of January of the present year; making her appearance in her own right and also as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children, Don Joaquin, Don Zoilo and Dona Cecilia Ibanez de Aldecoa y Palet born of lawful wedlock with her husband the said Most Excellent Don Zoilo Ibanez de Aldecoa y Aguirre, who was a resident of this City, where he died on the fourth day of October of the year one thousand eight hundred and ninety-five:

378 Dona Josefa Tremoya y Palet, widow of Don Modesto Cortabitarte e Ibanez de Aldecoa, twenty-two years of age, dedicated to the labors proper of her sex, and resident of this City, with personal cedula of the sixth class, number six thousand six hundred and four, issued by the Administracion de Hacienda Publica of this Province, on the twentieth of January of the present year; making her appearance in her own right and also as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children, Dona Isabel and Don Modesto Cortabitarte y Tremoya born of lawful wedlock with her late husband the said Don Modesto Cortabitarte e Ibanez de Aldecoa, who was a resident of this capital where he died on the fifteenth day of October of the present year:

Don Juan Ortiz Monasterio e Irisarri, merchant, of lawful age, married and resident of this capital, with personal cedula of the first class number two hundred seventy, issued by the Administracion de

Hacienda Publica of this Province, on the fourth of March of the present year:

Don Sixto Jesus Alvarez Perez, merchant, of lawful age, married and resident of this City, with personal cedula of the fourth class number nine hundred eighty, issued by the Administracion de Hacienda Publica of this Province, on the eighteenth of January of the present year;

379 Don Miguel Ossorio y Cembrano, merchant, of lawful age, married and resident of this City, with personal cedula of the fourth class number seven hundred ninety-four, issued by the Administracion de Hacienda Publica of this Province, on the fifteenth of January of the present year; and

Don Agustin Palet y Roca, merchant, of lawful age, married and resident of this City, with personal cedula of the first class number one hundred eighty, issued by the Administracion de Hacienda Publica of this Province, on the twentieth of January of the present year; making his appearance in his own right and as attorney in fact and legal representative of Don Guillermo Gargollo y Diez de Tejada, as credited by the first copy of the letters of attorney issued in his favor and in favor of the late Don Modesto Cortabitarte y Aldecoa, on the seventeenth of August of the present year, before the Notary public of the City of Ferrol Don Gumersindo Lopez Pardo, which copy he exhibits to me and being, literally copied, as follows:

"Number six hundred and twenty-six.—In the City of Ferrol this seventeenth day of August one thousand eight hundred and ninety-six.—Before me, Don Gumersindo Lopez Pardo, Attorney at Law Member of the Notarial College and resident of said City, personally appears Don Guillermo Gargollo y Diez de Tejada, fifty-four years old, merchant, and lately a resident of the City of
380 Manila, with personal cedula of the fifth class, number three hundred ninety-five, issued in that City on January twentieth, last; and being, in my judgment legally capable to execute this power of attorney, states:—That as a member and partner in the mercantile firm of Aldecoa & Company domiciled in the City of Manila, according to a public instrument ratified before the Notary Public of that Capital, Don Abraham Garcia y Garcia, on the eleventh day of March last, he grants special power of attorney in favor of Don Modesto Cortabitarte y Aldecoa and, in case of absence or illness of this gentleman, in favor of Don Agustin Palet y Roca, both residents of the City of Manila, for them to represent him at the meetings of the partners of said firm Aldecoa & Company, give their sanction to the resolutions of the same, in accordance with the articles of partnership, and approve, as he does hereby, the entrance of Messrs. Juan Ortiz Monasterio and Miguel Ossorio y Cembrano as partners in the said firm signing to this effect the necessary documents, since he does hereby approve whatever said attorneys may do while making legitimate use of this power of attorney;

This document has been executed before the witnesses Don Pedro Lopez Sardina and Don Juan Chacon Yanez, residents of this City who signed with him after having each one by himself read

381 this document. To whatever appears herein and to the fact

that I know the person executing this instrument I, the Notary, certify.—(Sgd.) Guillermo Gargollo.—(Sgd.) P. Lopez Sardina.—(Sgd.) Juan Chacon.—(Sgd.) Lic. Gumersindo Lopez Pardo.—This is a first copy of the original instrument which, under the number of order given at the beginning of this document, remains in my current *protocole*, written on a sheet of the twelfth class number 1,298,808. And, at the instance of the party executing this document, I issue this copy, which I sign, leaving an entry of this fact, in Ferrol, on the same day of the execution hereof.—There is a rubric.—(Sgd.) Lic. Gumersindo Lopez Pardo.—There is a notarial seal which reads: Notaria del Lic. Don Gumersindo Lopez Pardo, Ferrol.—Authentication.—The undersigned, Notary of the Illustrious College of Coruna, Notarial district of Ferrol, authenticates the foregoing sign, signature and rubric of the Notary Public of this City Don Gumersindo Lopez Pardo, in Ferrol, this 21st day of August, 1896.—There is a sign.—(Sgd.) Lic. Candido Conde Fern-z.—There is a rubric.—O. K. The Judge pro tem. of the Court of First Instance and of Instruction. El Ferrol.—There is a cancelled stamp for authentications, of the value of three pesetas.”

The foregoing agrees literally with its original, to which I refer.

382 And having, in my judgment, the necessary legal capacity to execute this instrument, without anything to the contrary being known to me, all the persons appearing, in their own right, and the Most Excellent lady Doña Isabel Palet y Gabarro also as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children Don Joaquin, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet; Doña Josefa Tremoya y Palet also as mother with parental authority and as legal administratrix of the property of her minor and not emancipated children Doña Isabel and Don Modesto Cortatibarte y Tremoya, and Don Agustin Palet y Roca, as attorney in fact and legal representative of Don Guillermo Gargollo y Diez de Tejada by virtue of the power of attorney granted to him and which he declares not to be, revoked, suspended or limited in whole or in part, they all freely and expontaneously state:

First. That by virtue of an instrument number one hundred and fifty seven, executed in this City on the eleventh day of March of the present year before the Notary Public Don Abraham Garcia y Garcia, the first copy of which has been registered at sheet number one hundred and nineteen, entry number three, folio sixty one, volume four of the Book of “Partnerships” of the Mercantile Registry of this City, the Most Excellent lady Doña Isabel Palet y Gabarro
383 and Messrs. Juan Ortiz Monasterio, Agustin Palet, Sixto Jesus Alvarez Perez and Guillermo Gargollo y Diez de Tejada and the late Don Modesto Cortabitarte, formed a general mercantile partnership (*sociedad mercantil regular colectiva*), domiciled in this City, under the firm name of Aldecoa & Company, the duration of which firm was fixed for the term of four years, beginning from the first day of January of the present year one thousand eight hundred and ninety six, having made the legal effects of the said contract

retroactive to that date; said partnership having taken charge of the assets and liability of the mercantile partnership which, under the same firm name had been doing business in this City up to December 31 of last year.

Second. That by another instrument, number three hundred and ninety nine, executed in this City before the same Notary, Don Abraham Garcia y Garcia, on the eleventh day of July of the present year, the first copy of which has been registered at sheet number one hundred and nineteen, duplicate, folio twenty two, bis, volume five, of the Book of "Partnerships" of the Mercantile Registry of this City, the late Don Modesto de Cortabitarte e Ibanez de Aldecoa, as manager of the said firm of Aldecoa & Company, Mr. Ortiz Monasterio and Don Miguel Cembrano, the former on behalf of said partnership and the other two in their own right, modified some of

384 the clauses of the Articles of the said partnership admitting

Mr. Ossorio y Cembrano and re-admitting Mr. Ortiz Monasterio, as industrial partners under the terms and conditions contained in the said instrument.

Third. That it being convenient to the interest of the partners of the present firm of Aldecoa & Company to dissolve the partnership formed by them, by reason of having to modify good many of the terms and conditions of the contract of partnership, and also by reason of the increase in the number of partners admitting new ones in the new firm which they have agreed to constitute, the Most Excellent lady Dona Isabel Palet y Gabarro, Don Juan Ortiz Monasterio e Irisarri, Don Sixto Jesus Alvarez Perez, Don Miguel Ossorio y Cembrano and Don Agustin Palet y Roca, all of them in their own right and the last named also as attorney in fact and legal representative of Don Guillermo Gargollo y Diez de Tejada, carrying said agreement into effect, by these presents, most solemnly state:

Fourth. That on this date the partnership formed by them under the firm name of Aldecoa & Company by virtue of the said instruments executed on March eleventh and July eleventh of the present year before the Notary Public Don Abraham Garcia y Garcia, is by these presents declared extinct and all of its assets and liabilities are to be taken charge of exclusively by the new partnership

385 which is to be formed by virtue of this instrument by and between the same parties and Dona Josefa Tremoya y Palet and her children and those of the Most Excellent lady Dona Isabel Palet.

Fifth. That by virtue of the foregoing statements, and it being the express desire of the above named parties to continue the business of the late firm of Aldecoa & Company, a desire which is equally expressed by the other lady appearing herein, Dona Josefa Tremoya y Palet both in regard to herself as well as in regard to her minor children, they have decided, by common agreement, on their own right and by their own free will, to form a new general mercantile partnership (sociedad mercantil regular colectiva) under the same firm name of "Aldecoa & Company," the object of which shall be to continue and develop the business of the old firm which was organized on the eleventh day of March of the present year and modi-

fied on the eleventh day of July last, dissolved hereby on this date; and in order to carry this agreement into effect, the Most Excellent lady Dona Isabel Palet y Gabarro, Dona Josefa Tremoya y Palet, and Messrs. Agustin Palet y Roca, by himself and as attorney in fact of Don Guillermo Gargollo, Juan Ortiz Monasterio e Irisarri, Sixto Jesus Alvarez Perez and Miguel Ossorio y Cembrano, by these
 386 presents solemnly declare: That on their own behalf and on behalf of the persons by them represented they hereby constitute the said partnership subject to the following terms and conditions:

First. The partnership which is by these presents organized shall be a general mercantile partnership (*sociedad mercantil regular colectiva*) which is to do business under the firm name of Aldecoa & Company its domicile being for all legal effects this City of Manila.

Second. The said firm of Aldecoa & Company shall take charge of the assets and liabilities of the mercantile firm which has been engaged in business in this City until the thirty first of December, one thousand eight hundred and ninety six and therefore the new firm is subrogated to all the rights and liabilities of the extinguished firm without restrictions or limitations of any kind.

Third. The only members which for the present compose this partnership are the following:

Capitalist partners:

The Most Excellent lady Dona Isabel Palet y Gabarro, widow of Ibanez de Aldecoa.

Dona Josefa Tremoya y Palet, widow of Cortabitarte.

Don Agustin Palet y Roca.

Don Sixto Jesus Alvarez Perez.

387 Don Miguel Ossorio y Cembrano.

Dona Isabel Cortabitarte y Tremoya, and

Don Modesto Cortabitarte y Tremoya.

Industrial partners:

Don Juan Ortiz Monasterio e Irisarri.

Don Sixto Jesus Alvarez Perez.

Don Miguel Ossorio y Cembrano.

Don Guillermo Gargollo y Diez de Tejada.

Don Joaquin Ibanez de Aldecoa y Palet.

Don Zoilo Ibanez de Aldecoa y Palet, and

Dona Cecilia Ibanez de Aldecoa y Palet.

Fourth. The object of the partnership shall be to continue the business transactions of the former firm of Aldecoa & Company consisting of all kinds of commerce in general, both of importation and exportation, banking, exchange, commissions, advances in payment of expenses duly secured by merchandise in the hands of the firm and consigned to the same, advances on the value of hemp consigned to the firm and deposited therewith or placed at its disposal in the provinces and whatever other transactions may be deemed useful in the opinion of the majority, except mining business which is abso-

lutely forbidden to engage in or to interest the firm as well as any other kind of business related to mining or mining enterprises.

The partners shall take care that for no reason the amount
388 of the balance of the old firm as a result of the hemp and steamship business or of any other business actually established, made on December 31st, 1896, shall suffer any increase; and in case that, for the interest of the partnership it should be considered convenient to establish any new business or to modify any of that already established whether or not any greater amount of capital need be invested, it shall be necessary to submit it to the approval of the meeting of the partners wherein the majority is to decide what shall be done in each case.

Fifth. The duration of this partnership is fixed for the term of ten years, beginning on the first day of January, one thousand eight hundred ninety seven and ending on December thirty first nineteen hundred and six. This term may be extended for as long a period and as many times as the capitalist partners may agree.

If, for any reason, the industrial partners Don Joaquin, Don Zoilo and Dona Cecilia Ibanez de Aldecoa y Palet should withdraw from the firm this firm shall immediately enter into liquidation the duration of which shall be fixed by the majority of the members.

Sixth. The use of the firm name is given severally to Messrs. Juan Ortiz Monasterio, Sixto Jesus Alvarez Perez, Miguel Ossorio
389 y Cembrano and Guillermo Gargollo y Diez de Tejada.

Seventh. The members having the use of the firm name are hereby appointed managers of the firm; but Mr. Ortiz Monasterio, by reason of the long time he has belonged to the firm, and on account of having already held this office, shall designate the branch of the business which each one of the others is to take charge of as managers, without prejudice, in case of illness or absence, of one substituting another. If, in the absence of Mr. Ortiz Monasterio it should be necessary to change any of the appointments made by him, said change shall be agreed upon by the majority, reporting this fact to Mr. Ortiz and asking his advice, and, should it disagree with what has been resolved, a new resolution can be taken by meeting.

In case that the appearance of one of the partners be necessary before any Court, Board, Authority, etc., and this duty is not included or foreseen in those already designated, the majority shall appoint the person who is to fulfill it.

By this procedure, the person designated as manager shall act at all times and in all cases as such manager, without limitation as to time, and always complying with the resolutions of the majority according to each particular business; and the person designated as
390 manager, clothed with all the authority and representation of the partnership, shall have power, on behalf of said partnership, to make all kinds of purchases, charges, sales, contracts, loans, transactions, business and mercantile speculations which may fall within or be related to the purposes of this firm; to compromise any differences or questions which the partnership may have with third persons or entities; to represent the partnership

judicially or extrajudicially; to transact all the business wherein the partnership may be interested; to appoint all kinds of general or special agents and solicitors for the claim or collection of credits, and to file before the Courts the complaints and exceptions which may be deemed convenient.

The partner which, as such, or as manager, should not comply with the resolutions of the majority may be separated from the partnership should a majority of the meeting of the partners so decide.

Eighth. The capital of the firm shall be Three Hundred Seventy Five Thousand Pesos contributed by the partners in the following proportion:

The Most Excellent lady Dona Isabel Palet y Gabarro, widow of Ibanez de Aldecoa Two Hundred Thousand Pesos.

Don Agustin Palet y Roca One Hundred Thousand Pecos.

Dona Josefa Tremoya y Palet, widow of Cortabitarte, Twenty Five Thousand Pesos.

Dona Isabel de Cortabitarte y Tremoya Twelve Thousand 391 Five Hundred Pesos.

Don Sixto Jesus Alvarez Perez, Twelve Thousand Five Hundred Pesos.

Don Modesto Cortabitarte y T., Twelve Thousand Five Hundred Pesos, and

Don Miguel Ossorio y Cembrano Twelve Thousand Five Hundred Pesos.

Which amounts appear in the respective accounts of the capital on the first day of January eighteen hundred and ninety seven, and in the inventory taken by common agreement, said amounts representing credits, values and other property, as set forth in said inventory.

Ninth. The profits or losses obtained shall be prorated as follows:

Capitalist Partners.

The Most Excellent lady Dona Isabel y Gabarro, thirty two per cent.

Don Agustin Palet y Roca, sixteen per cent.

Dona Josefa Tremoya y Palet, four per cent.

Dona Isabel de Cortabitarte y Tremoya, two per cent.

Don Modesto de Cortabitarte y Tremoya, two per cent.

Don Sixto Jesus Alvarez Perez, two per cent, and

Don Miguel Ossorio y Cembrano, two per cent.

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Industrial Partners.

Don Juan Ortiz Monasterio e Irisarri, five per cent.

Don Sixto Jesus Alvarez Perez, eight per cent.

Don Guillermo Gargollo y Diez de Tejada, five per cent.

Don Miguel Ossorio y Cembrano, eight per cent.

Don Joaquin, Don Zoilo and Dona Cecilia Ibanez de Aldecoa y Palet, five per cent.

For unforeseen cases eight per cent. And the balance of one per cent for the purpose hereinafter to be stated.

If the allotment made for unforeseen cases as well as the balance of one per cent should find no application during the year, they shall be prorated on the thirty-first of December of that year among the industrial partners only, in the same proportion as their respective shares as such industrial partners.

If it should happen that the allotment made for unforeseen cases should find application in a new industrial partner admitted into the partnership, this shall not alter the proportion in which the others are to share, inasmuch as their share is already limited.

If the new industrial partner should desire at the same
393 time to become a capitalist partner, his share and participation as such shall be that which may correspond him on the amount of capital paid in by him in proportion to the total amount of the capital of the partnership.

The admission of a new partner either as capitalist partner or as industrial partner shall be subject to the vote of the majority, although, acknowledging the convenience of admitting one, the maximum interest which can be reserved to him, as industrial partner, is already estimated. His interest as capitalist partner shall depend from the amount of capital he may bring.

The industrial partner shall bear the losses which the partnership might suffer by reason of bad business in the same proportion assigned to them, but only out of the reserve fund to be established as provided in clause twelfth, and if the loss suffered should exhaust said fund, the excess shall be born- exclusively by the capitalist partners.

Tenth. None of the capitalist partners shall draw any salary or shall be able to dispose of his capital in the partnership; this capital shall earn no interest of any kind; but he shall have a right if the partnership should agree, to deposit therewith at the maximum interest of five per cent per annum, the capital or the economies
394 of his respective wife and children, the partnership giving security to these deposits whenever it may be deemed convenient, with values or property of the same and in the manner prescribed by law, in order to establish the preference of the credits of this nature.

The heirs of the deceased, the Most Excellent Don Zoilo Ibanez de Aldecoa, shall be considered preferred creditors as if they had been acknowledged as such by public instrument.

The right to make the deposit to which this article refers is given in favor of both the capitalist partners and the industrial partners.

Eleventh. The partners may withdraw every month for their personal expenses up to the following amount:

The Most Excellent lady Dona Isabel Palet y Gabarro, eight hundred thirty three pesos and thirty three cents.

Don Agustin Palet y Roca, five hundred pesos.

Dona Josefa Tremoya y Palet, one hundred and twenty five pesos.

Dona Isabel de Cortabitarte y Tremoya, sixty two pesos and fifty cents.

Don Modesto Cortabitarte y Tremoya, sixty two pesos and fifty cents.

Don Sixto Jesus Alvarez Perez, six hundred forty five pesos and eighty three cents, of which sixty two pesos and fifty cents are the amount which he can draw as capitalist partner, and five hundred eighty three pesos and thirty three cents as industrial partner.

Don Miguel Ossorio y Cembrano, six hundred forty five pesos and eighty three cents, of which, sixty two pesos and sixty cents is the amount which he can draw as capitalist partner, and five hundred eighty three pesos and thirty three cents as industrial partner.

Don Guillermo Gargollo y Diez de Tejada, two hundred pesos, and Don Juan Ortiz Monasterio, two hundred pesos.

The right hereby granted to the above named partners must be made use of by them gradually as it may be convenient and under the liability of the partners present.

If a new industrial partner should come to represent what has been allotted for unforeseen cases, he shall have a right to draw as salary or to apply to his personal expenses the monthly sum of five hundred and eighty three pesos and thirty three cents, in the same gradual form as above established. If, at the same time, he should come into the partnership as capitalist partner thereof, he shall have a right to draw in advance on account of his share in the profits in the same manner and proportion as Messrs. Alvarez and Ossorio in their character as capitalist partners.

The advances made to the capitalist partners for their personal expenses are considered as an advance payment on account of the profits which may correspond them; and therefore if on any year there should be no profits, any money drawn by them must reduce their capital in the amount so drawn.

The advances assigned to the industrial partners for their personal expenses which amounts, in regard to Mr. Alvarez, to seven thousand pesos a year; in regard to Mr. Ossorio, seven thousand pesos a year; to Mr. Ortiz Monasterio, two thousand four hundred pesos a year; to Mr. Gargollo, two thousand four hundred pesos a year, and the seven thousand pesos allotted for unforeseen cases are a part of the profits for the industry, and *this* amounts shall, on any year where there may have been no profits, mean an inevitable expense for the partnership and the industrial partners shall not be obliged to refund what they may have drawn on this account, since the advance has been made to them to cover their indispensable living expenses, they being obliged, in exchange, to work for the partnership; with the result, therefore, that said amounts must always be balanced on the thirty first of December of each year by the account of general expenses.

Twelfth. If fifty per cent of the net profits belonging to each capitalist partner should exceed the amount allotted to him for his yearly personal expenses, he shall be able to freely dispose of the difference.

The balance of fifty per cent shall form part of the account to be known as "reserve fund" which must be kept in order to meet any unforeseen losses which might occur.

The industrial partners shall, likewise, contribute with fifty per cent of the amount which may correspond them from the net profits to the building of said reserve fund, being at liberty to dispose of the remaining fifty per cent.

Thirteenth. The reserve fund shall be kept until the expiration of the social term, if all partners should reach that period; this account to be liquidated *pro rata* to each one in accordance *which* his share and in equal proportion to those of the others.

In case of death of any of the partners his share in the reserve fund shall be liquidated; being distributed between those who may have an interest in the same, the amount so liquidated to be proportionally replaced in said reserve fund.

No liquidation of the liability of any partner in the account of the reserve fund is to be made in case of sale by one partner of his share or interest in favor of another partner; if any such sale takes place, it must include, not only the interest or share but also the part of the vendor's liability in the reserve fund.

398 No other charges are to be made in this account than those originating from extraordinary and unforeseen losses and not those which arise from the active life of business.

The account of the reserve fund shall earn no interest.

Fourteenth. On making the balance, the resolution of the majority opinion of the partners shall fix the value which is to be given to the property and belongings of any kind of the partnership for the next ensuing year, as well as the items which on account of insolvency, depreciation or any other reason deserve to be carried directly to the account of loss and profits for the ending year.

This is the manner in which the general balance is to be made on the thirty first day of December of each year and the capital of the firm appearing in the respective account shall be made up from the partial amounts contributed by each capitalist partner, these figures to be considered as the exact ones in case of having to liquidate the share of any partner either by voluntary or obligatory separation or by death.

Fifteenth. No partner may engage in business outside of the partnership. They are, however, authorized to administrate their own private interests or those of another partner whom they may legally represent, whenever this administration, in the judgment of the majority, should not prejudice the business of the partnership.

399 Sixteenth. The method and manner of running the business of the partnership must be fixed by resolution adopted by the majority of the meeting of partners, which shall be entered in the Book of Minutes which is to be kept for this purpose in compliance with the requisites of articles thirty three and forty of the Code of Commerce in force.

In the month of January of each and every year and in view

of the balance made on the thirty first of December, a meeting of partners shall be held to examine and pass upon the result obtained and to agree upon the changes which may be deemed convenient for the interest of the partnership, as well as to determine the manner in which the business is to be conducted in the future.

Besides, and whenever any partner should deem it convenient, a meeting shall be called to discuss the matters pertaining to said partnership, extending the proper minutes wherein the resolutions taken by the majority are to be consigned.

The majority in this case, as well as in any other, must be computed by the amount of the share of each partner in the profits of the business, as established in clause nine hereof.

Seventeenth. The absent partners may be represented at the meetings by other partners, through special power of attorney duly executed before a Notary Public.

The voting in any definite case must be personal.

For any matter pertaining to the increase or reduction of the capital of the firm or value of the assets, all partners absent (if they are capitalist partners) must be represented by proxy.

The minor children of the Most Excellent Don Zoilo Ibanez de A. y Aguirre who are members of this firm, as industrial partners, shall not have the right to vote or to be heard at the meetings of the partnership.

No person can be considered as partner in this firm or represent any partner in this firm, by reason of any relation of any kind with any of the members thereof, who is not himself a partner of the same. No other representation being admitted, not even a legal one, such as father, guardian, husband, etc.

It is the duty of every partner to leave an attorney-in-fact or representative in case of absence, and to this effect, the letters of attorney, as well as the wills must be deposited in due time in the safe of the firm before the first day of March of the year one thousand eight hundred and ninety seven.

Eighteenth. Should any one of the partners wish to retire from the firm, he shall submit his *motive* in writing, and the majority shall adopt any resolution which it may deem convenient in regard thereto.

If the motion should be denied by the firm, any of the other members thereof may individually buy the share of the outgoing partner. In no case shall any other person who is not at present a member of the firm, be admitted into same, unless by unanimous consent of all the partners, except in the case provided for in clause nine hereof when the vote of the majority shall be sufficient.

The member Mr. Ortiz Monasterio, may retire from the firm whenever he may so desire by reason of health or his own convenience.

Nineteenth. All the expenses of the partnership, such as taxes, salaries, compensation to the employees, rent of warehouses, insurance and any other which may be necessary to attend properly to the needs of the firm, shall be on the account of the same.

Twentieth. Dona Isabel Palet y Gabarro and Dona Josefa Tre-

moya y Palet, and the minors Don Joaquin, Don Zoilo and Dona Cecilia Ibanez de Aldecoa, as well as Messrs. Palet, Ortiz Monasterio, and Dona Isabel and Don Modesto Cortabitarte, are excused from attending to the office, and remain at liberty to reside wherever they please. The other three partners, Messrs. Alvarez, Os-
 402 sorio and Gargollo, as well as the industrial partner who may in the future be admitted into the partnership, are hereby bound to work for the firm, personally and actively, each one, however, being granted one month vacation leave each year to take care of his health.

This vacation leave, which they shall enjoy alternately, shall be determined by the meeting, and the member on leave shall be substituted in his duties by another partner or by a clerk.

In case of illness, a member shall be substituted in the same manner, but if the illness should extend over a period of one month the compensation of the substitute shall be on his account, if so decided by the other partners. If the illness should extend for over a period of one year, the definite withdrawal of the industrial partner may be decided by the majority, even if the industrial partner be also a capitalist partner.

After the business has been satisfactorily organized and its condition be a prosperous one, and with a sufficient and competent clerical staff, alternate leaves of absence for one year can then be thought of. This larger period shall make a trip to Europe possible, so convenient to health.

The turns for the annual vacation as well as for the trips to Europe shall be taken in the order in which the names of the
 403 industrial partners appear in the clause hereof regarding the share in which each one of them is to have in the profits of the business. (Art. Ninth.)

Twenty-first. In case of death of any of the members of the firm, the deceased and his heirs shall cease from the date of the demise, to have any interest of liability in the firm and the partnership shall continue between the surviving members for the rest of the term of its duration and the extension thereof as may be agreed upon, as if such demise had not occurred.

The liquidation of the profits and the losses which is to be made in the share of the deceased partner for the year in which his demise may have occurred, shall be made in accordance to the balance of December thirty first of that same year, estimating the proportion of the profits from the first of January of said year up to the date of the death.

Twenty-second. In the case of death of a capitalist partner the amount of his share which the partnership will acknowledge shall be that which may appear to be on the first day of January of the year of his death, and the liquidation of his interest for the year of his death, shall be made in the manner already provided for in the foregoing clause. The same procedure shall be observed for the industrial partners; after ascertaining definitely the amount of
 404 the capital to which the corresponding amount of the reserve fund is to be added, the payment to the heirs shall be made in the following manner:

If the deceased is a capitalist partner, the amount of his share shall be divided by the ten years or the unexpired part of the same, and the result shall be the annual sum to be paid to the heirs, with the interest of five per cent per annum.

If the deceased is an industrial partner, the payment cannot be deferred over three years, and shall be made gradually and with interest. These obligations arising by reason of death of the members of the firm, must be acknowledged by public instrument and shall be considered preferential in order to offer greater securities to the interest of those who during their lives contributed so much to the prosperity of the partnership.

Twenty-third. The interest which the deceased partner may have in the partnership shall be distributed in the following manner: as capitalist partner, between himself and the other surviving capitalist partners, since the latter assume the liability of the former for the partnership's obligations; but the deceased or those surviving him shall not be released from liability of the deceased in the Reserve Fund, since, if this were not done, it would be necessary to estimate the relation between the capital and the reserve fund of the
405 deceased, and distribute the amount proportional to the capital between the surviving partners, and that corresponding to the reserve fund between those persons contributing to such fund in proportion to the share of each one, eliminating the share of the deceased.

If the deceased, besides being a capitalist partner is also an industrial partner, his interest as such industrial partner shall be distributed between the other industrial partners in the proportion in which each one of the latter shall come to represent eliminating the interest of the deceased.

If the deceased is an industrial partner, his interest shall be distributed between the other industrial partners for the share which each one represents in the profits in the new proportion which by the demise will be established, excepting the three minors whose share in the profits shall be always the one already fixed, to wit, five per cent.

Twenty-fourth. It is hereby absolutely forbidden to sign promissory notes, public instruments, or any other similar document unless it be in connection with the business and proper obligations of the partnership, with the exception of Messrs. Alvarez and Ossorio who are hereby authorized to raise the necessary funds in order to deposit the same as capital in this firm.

406 The partner who should violate this clause signing any promissory note or any other document, signing any bond in the name of the firm shall be immediately separated from the partnership and he shall be the only person liable to the same for the signature, the security given or the liability assumed.

Twenty-fifth. The partners in making their wills shall adjust the provisions in the same to the strict compliance of the agreement contained in this instrument; it being hereby established as a basis therefor that it shall be forbidden to have the intervention of the Courts in the testamentary proceedings and that any disposition made,

whether by will or not, against the basis of this instrument shall be null and void.

All the partners shall deposit authenticated copies of their wills in the safe of the firm, one of the provisions of which wills to be that one or more of the members of this firm shall be the executor of the will to intervene as the representative of the deceased in whatever may refer to the liquidation of the assets in the partnership, and, if such provision is not made, the partnership shall appoint by majority of votes, the partner who is to act as executor for the liquidation of his share, since the partnership, in no manner, shall consent any stranger to intervene in the business of the same.

407 Twenty-sixth. As soon as the partnership should have complied with all its obligations and if there is a balance in cash, the majority of votes of the partners may decide a distribution of the same in proportion to the capitals which each partner may have in the firm; this however shall not interrupt the course of business, since it must be also previously established by vote in what form shall the business continue, as well as the annual amount which the partners may gradually make use of to attend to their personal expenses, and whatever may be thought convenient to reform by reason of the small profit of the business and the diminution of the capital.

Twenty-seventh. All differences between the partners shall be settled by the meeting of the members and by the vote of the majority of those present. If the resolution is not satisfactory to the parties, the case shall be submitted to the decision of three merchants of foreign nationality, whose decision shall be considered final and inappealable.

The election of three arbiters shall be made by the common agreement of the parties in discord; and should they not come to a such an agreement, the meeting of the partners shall make the choice by a majority vote. In no case shall there be an appeal from the decision of the arbiters to the Courts of Justice; and the party

408 who, disregarding this caution should apply to the Courts, shall be immediately separated from the partnership and shall be fined in the sum of twenty-five thousand pesos which shall be distributed on his account between the other members in proportion to the interest of each one in the firm, and shall, besides, be obliged to indemnify the firm for the expenses and damages caused by his claim, complaint, or judicial action; to this end, his share in the capital of the firm shall be retained until the final decision is rendered, since said share shall be liable for the expenses and damages caused to the partnership.

And twenty-eighth. Any infamous, criminal or political prosecution; the practice of vices condemned by morals or by the most exquisite breeding, or the infraction of any of the clauses of this contract of partnership, in all or in part, shall be sufficient reason for expulsion, which shall be decided by the vote of the majority; in this case, it shall be necessary that the absent partners be represented at the meeting;

Under the foregoing pacts and stipulations the firm of Aldecoa & Company is hereby constituted; which pacts they all promise and

bind themselves to keep and comply with, the Most Excellent lady Dona Isabel Palet y Galarro and Dona Josefa Tremoya y Palet and Don Agustin Palet y Roca, doing so not only in their own name and behalf but also on behalf of the persons by them represented, as to each and every part thereof.

The parties to this instrument are hereby advised by me, the Notary, that a copy hereof must be filed in the Mercantile Registry of this City, for its Registration, without which requisite it shall not affect third parties, according to the provisions of the Code of Commerce in force, of which advice they all have stated to have taken due notice.

So it is stated and executed in the presence of the instrumental witnesses, Don Tomas Aguilon and Don Zacarias San Pedro, both of age, and residents of this City; and this instrument having been read by all parties present by virtue of the right which they have under the law, said parties ratify themselves and they all sign, approving the superscripts: e: v: vices, and the interlined: ser. To all of which, as well as to the fact that I personally know the parties, their profession and residence, I the Notary, hereby certify.

(Sgd.)	ISABEL PALET VIUDA DE	
	ALDECOA.	[RUBRICATED.]
(Sgd.)	JOSEFA TREMOYA VIUDA DE	
	CORTABITARTE.	[RUBRICATED.]
(Sgd.)	JESUS ALVAREZ PEREZ.	[RUBRICATED.]
(Sgd.)	J. ORTIZ.	[RUBRICATED.]
(Sgd.)	M. OSSORIO.	[RUBRICATED.]
410 (Sgd.)	A. PALET.	[RUBRICATED.]
(Sgd.)	TOMAS AGUILON.	[RUBRICATED.]
(Sgd.)	ZACARIAS SAN PEDRO.	[RUBRICATED.]
(Sgd.)	DR. ENRIQUE BARRERA Y	
	CALDES.	[RUBRICATED.]

On the margin: On the same date, December thirty-first, eighteen hundred and ninety-six, I have issued the first copy of this document at the instance of the parties executing the same, written on a sealed sheet of the first class and fourteen of the tenth class for the present term of two years. To all of which I certify.

BARRERA. [RUBRICATED.]

411 PLAINTIFF'S EXHIBIT "L."

Don Jose Maria Rosado y Calvo, attorney at law and notary public of this city of Manila, and a resident thereof, hereby

Certify: That Act No. 19 of the Book of Minutes of the Mercantile firm of Aldecoa & Company literally copied reads as follows:

"Act No. 19.—On the 28th of February, 1898, the gentlemen whose names appear on the margin hereof, having met in session and being present, it was reported that on the 26 of the present month an instrument was executed and signed before the Notary Public Don Enrique Barrera, admitting Mr. Alexander S. Macleod

"as partner in this firm, making the effects of his admission retro-active to the 1st of January of the present year.

"For the running and care of the firm's business it is agreed to continue in accordance with the standard established by the Act of February 21, 1897, as regards the distribution of the work; but inasmuch as Mr. Alvarez is about to make use of his vacation leave provided for by our contract of partnership from March 15, next, the duties of this partner shall be fulfilled by Mr. Macleod, who for this purpose shall begin to get acquainted with all matters pertaining to that branch. And there being no further business to discuss, the meeting was adjourned. (Sgd.) M. Ossorio.—(Sgd.) S. Jesus Alvarez Perez.—(Sgd.) Alejandro S. Macleod.—(Sgd.) For myself and for Don Agustin Palet, Guillermo Gargollo."

412 In witness whereof, I issue these presents at the request of Don Fernando Zobel y de Ayala, whom I know and who exhibited to me his personal cedula No. A-1,330,174, issued on January 25, 1906, and I signed this certificate in Manila, this 18th day of April, 1906.

[NOTARIAL SEAL.]

(Signed)

JOSE MARIA ROSADO Y CALVO,

Notary Public.

My commission expires December 31, 1906.

(P0.20 Int. Rev. Stamp.)

PLAINTIFF'S EXHIBIT "J."

"13. Act No. 45.—(On the margin.) A. S. Macleod, F. Zobel on behalf of Doña Isabel Palet y Cabarro widow of Aldecoa, * * * "In the City of Manila, this 24th of January, 1907, Messrs. Alexander S. Macleod on his own behalf, and Don Fernando Zobel y de Ayala as attorney in fact of Doña Isabel Palet viuda de Aldecoa, the latter and the former being partners of said firm representing the largest share of the firm's capital, having met at the domicile of the partnership Aldecoa & Company in liquidation situated at No. 9

413 Plaza del P. Moraga, Binondo, of this City, after having called the meeting to order and considering again the best way to proceed to the winding up of the business of the firm, Resolve: Whereas we believe that it is most convenient for the interest of all the partners and of the creditors of Aldecoa & Company that the liquidation be carried on, as slowly as possible, inasmuch as in that manner there would be greater probability to succeed in getting all the debtors of the firm to pay in full the amount of their debts and to sell certain parts of the business as a going concern.—Whereas as it is also convenient to collect from some debtors, in the best possible manner, for the interest of all, the total amount of their debt, receiving in payment, if necessary, the property and right of the same.—Whereas the other partners are absent and there is no one to represent them legally and we jointly have or represent the largest share of the firm's capital.—Therefore we at this meeting resolve to authorize, as we do hereby, the liquidator Mr. William

Urquhart to do and execute as such liquidator any or all of the following acts, to wit:—(a) to carry out the liquidation as slowly as possible, he is hereby authorized to continue doing business only with those consignors who are solvent and whose reliability and formality is known to the firm, continuing to that effect with their consignments, so as, with the proceeds of the same, to attend to the maintenance and best development of the liquidation.—(b) to secure from the Hongkong & Shanghai Banking Corporation the assistance of said bank in the winding up of the firm's business obtaining therefrom on long — the amounts which he may need

414 for the payment of other debts and for the maintenance of the liquidation; he being also authorized to sign and execute whatever documents either public or private be necessary or convenient to carry out any agreement entered into by Aldecoa & Company with the Hongkong and Shanghai Banking Corporation.—(c) to bring suit against those debtors of the firm when he may think necessary to sue in order to obtain the immediate payment of their debts.—(d) to receive in payment of debts, real and personal property, rights and actions of the debtors of the firm in liquidation.—(e) to remit those debts which may be impossible to collect, in exchange for some benefit from the debtors in favor of the partners of Aldecoa & Company and the creditors of this firm.—(f) to compromise suits and differences whenever any benefit may be derived thereby to the partners of Aldecoa & Company or its creditors.—(g) to adjudicate in payment of debts of the firm in liquidation, property, rights or actions of this firm.—(h) to sell all kinds of real and personal property and business of the firm for the price which he may think best, which price he may demand in cash or instalments, getting in the last case the necessary mortgage securities or pledges.—(i) to represent the liquidation before the Courts of justice either as plaintiff or as defendant, filing all the actions which he may deem proper and prosecuting all cases through all processes until the

415 final determination of the matters in question.—(j) to grant general or special power of attorney substituting any or all of the powers granted him hereby, in favor of any person.—(k) to execute whatever documents either public or private which may be necessary for the execution of all the acts for which he is hereby authorized, with all clauses and requisites sufficient for the validity thereof.—The authority and power which by virtue of this resolution are given to Mr. William Urquhart as liquidator of the firm of Aldecoa & Company shall not be interpreted as a limitation in any manner of the powers which said liquidator has as such in accordance with the Code of Commerce.—And there being no further business to discuss, the meeting was adjourned at 4:30 p. m. To all of which we agree.

(Sgd.)

ALEJANDRO S. MACLEOD.
ISABEL PALET,

Widow of Aldecoa,

(Sgd.)

p. p. FERNANDO ZOBEL.

I, Don Jose Maria Rosado y Calvo, Attorney at law and Notary Public of the City of Manila and a resident thereof.—Certify that the foregoing is a faithful copy of its original which has been pointed to me and is contained in the Book of Minutes of the firm of Aldecoa & Company which has been exhibited to me by Mr. William Urquhart, a merchant, of lawful age, single, and resident of this City, for the effects of this testimony, and to which I refer. The applicant Mr. Urquhart exhibits also his certificate of cedula No. A-1,330,176, issued by the Collector of Internal Revenue of this City, on January 25, 1906.—In witness whereof, I have signed my name
 416 at the foot of this certificate and placed my official seal in Manila, this 25th day of January, 1907.

[NOTARIAL SEAL.]

JOSE MARIA ROSADO Y CALVO,
Notary Public.

My commission expires on December 31, 1908.

So it appears from the document which has been exhibited to me, to which I refer and which had been filed in this Registry, at four o'clock, to day, Manila, P. I., January 25, 1907.

DR. ENRIQUE BARRERA Y CALDES. [RUBRICATED.]

PLAINTIFF'S EXHIBIT "K."

The full text of this exhibit being hereby omitted by common agreement of the parties, the following abstract of the same is given as follows: Petition for registration in accordance with Act No. 496 of the Philippine Commission, described in letter F Plaintiff's Exhibit "B." In said petition, there is a clause which reads as follows: There is no other incumbrance according to my best knowledge and belief, nor any person claiming any right in the said property, except a mortgage for the sum of P22,885.60 in favor of the Hongkong and Shanghai Banking Corporation according to deed of mortgage executed on March 23, 1906, before the Notary Public of Manila, Don Jose Maria Rosado, which is the same instrument marked Exhibit "A."

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PLAINTIFF'S EXHIBIT "K-1."

This exhibit is omitted by common agreement of the parties, it being the final decree under Act No. 496 of the Philippine Commission, declaring Isabel Palet y Gabarro sole owner in fee-simple of the property described under letter F in plaintiff's exhibit "B," said decree finding that there is a mortgage for P22,885.60 in favor of the Hongkong and Shanghai Banking Corporation by virtue of the deed executed on February 23, (Exhibit "A") and March 23, 1906, (Exhibit "B").

PLAINTIFF'S EXHIBIT "L."

The full text of this exhibit is omitted by common consent of the parties, it being a petition for registration according to Act No. 496 of the Philippine Commission, of the property belonging to Isabel Palet, Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet, described under letter E plaintiff's exhibits "A" and "B," said petition containing a clause which reads as follows: (3) over three fourths of the property of which Doña Isabel Palet, Don Joaquin and Don Zoilo Ibañez de Aldecoa are owners there is a mortgage for P203,985.79 (two hundred three thousand nine hundred eighty five pesos and seventy nine centavos Philippine currency in favor of the Hongkong and Shanghai Banking Corporation by virtue of an instrument executed before the Notary Public of Manila, Don Jose Maria Rosado y Calvo, on March 23, 1906, (Exhibit "B").

418

PLAINTIFF'S EXHIBIT "L-1."

This exhibit is omitted by common agreement of the parties, it being the final decree under Act No. 496 of the Philippine Commission, declaring Isabel Palet y Gabarro, Joaquin, Zoilo and Cecilia Ibañez de Aldecoa, joint owners with one-fourth interest each of the property described under letter E in exhibits "A" and "B" of plaintiff, said decree finding that there is a mortgage for the sum of two hundred three thousand nine hundred eighty-five pesos and seventy-nine centavos (P203,985.79) Philippine currency, over three-fourths of said property belonging to Doña Isabel Palet, Don Joaquin and Don Zoilo Ibañez de Aldecoa, in favor of the Hongkong and Shanghai Banking Corporation.

419

PLAINTIFF'S EXHIBIT "M."

Exhibit "M" is omitted by agreement of the parties, same being a Certificate of Title issued in favor of Salustiano Zubeldia on a certain property mentioned in plaintiff's Exhibit "C" wherein it appears that there is a mortgage in favor of Aldecoa and Company by virtue of a document dated October 10, 1906, and mortgage of the real right of mortgage of Aldecoa and Company in favor of the Hongkong and Shanghai Banking Corporation by virtue of public instrument dated December 22, 1906 (plaintiff's Exhibit "C"). The purpose of offering this exhibit in evidence, as it so appears from the transcript of the testimony, was to know the correct description of the property referred to in the plaintiff's Exhibit "C."

PLAINTIFF'S EXHIBIT "N."

As to this exhibit, which does not appear in the record, there is the following stipulation in the transcript of the testimony taken in this case: "It is stipulated by the parties that the real properties described in plaintiff's exhibit "F" have, subsequent to the date of that document, been registered under the Land Registration Act, and that ac-

420 curate description of the said properties is to be found in the decree entered in case No. 1492 of the Court of Land Registration, copy of which will be produced and introduced in evidence as plaintiff's Exhibit "N."

PLAINTIFF'S EXHIBIT "O."

As to this exhibit, which does not appear in the record, there is the following stipulation in the transcript of the testimony taken in this case: "It is similarly stipulated by counsel for the respective parties, with respect to the property described in Exhibit "E," and copy of the same will be produced and introduced as plaintiff's Exhibit "C."

PLAINTIFF'S EXHIBIT "P."

Plaintiff's Exhibit "P" is omitted by common agreement of the parties. It is the book containing the Ledger account of "Aldecoa and Company in liquidation in current account"; also containing another account called "Aldecoa and Company in liquidation, Liquidator's Account" wherein it is shown that the debit balance of Aldecoa and Company in liquidation on January 13, 1912, was P377,

523.46 plus interest from December 31, at the rate of 7% per annum, and that the debit balance on the 22nd of January, 1912, of the account of "Aldecoa & Company in liquidation, Liquidator's account" was P13,460.55 plus interest from December 31, 1911, at the rate of 7% per annum.

PLAINTIFF'S EXHIBIT "Q."

Exhibit "Q" is a memorandum of the several amounts paid in by several debtors of Aldecoa & Company which should have been and were credited to the account of Aldecoa and Company, as follows:

Martin de Achaval, Legaspi.....	P14,000.00
A. Garchitorea, Neuva Caceres.....	" 6,964.62
Francisco Rodriguez, Daet.....	" 4,200.00
Tremoya Hermanos	" 2,029.66
S. Zubeldia, Tabaco	"43,500.00
Widow & Sons of Esgaño.....	"63,524.47
Acordagoicoechea Hermanos	" 2,124.28

PLAINTIFF'S EXHIBIT "R."

Exhibit "R" is a copy of the entries in the Books of Aldecoa and Company in liquidation, relating to the account of the defendant concern and the plaintiff bank showing that the amount due from said firm to the bank on December 31, 1911, was P380,523.46.

422

PLAINTIFF'S EXHIBIT "S."

Exhibit "S," which is omitted by common agreement of the parties, is a copy of the account of the Hongkong and Shanghai Banking Corporation with the Liquidator of Aldecoa and Company in liquidation as shown by the books of this concern, showing that the balance on December 31, 1911, amounted to P13,460.55.

423

EXHIBIT "T."

Emancipation.

In the City of Manila, Philippine Islands, this thirty-first day of July, nineteen hundred and three; before me, Enrique Barrera y Caldes, Notary Public of the same, personally appeared:

Dona Isabel Palet y Gabarro, widow of Don Zoilo Ibanez de Aldecoa y Aguirre, property holder, of lawful age, and resident of this City, without exhibiting any cedula on account of being exempt therefrom by reason of her sex:

And Don Joaquin Ibanez de Aldecoa y Palet, without any special profession, over eighteen years of age, single, and resident of this City, with cedula number one hundred sixty-one thousand nine hundred and seventy-eight, issued by the Collector of Internal Revenue of this City for the present year.

And having, as I believe they have, legal capacity to execute this instrument, Dona Isabel Palet y Gabarro, states:

That acknowledging in her son, Don Joaquin Ibanez de Aldecoa the faculty to rule his person and manage his property, renounces for herself the parental authority (*patria potestad*) which she heretofore had over his person and property, and by virtue hereof she empowers him from now on to manage by himself the property
424 belonging to him and that which in the future he might acquire, just as if he were of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents, either public or private, which may be necessary for the above named purposes.

Don Joaquin Ibanez de Aldecoa y Palet, on his turn states: That he accepts the emancipation granted him by his mother by virtue of the present document, being grateful to her for the benefit she thus confers on him.

In witness whereof, the above named parties ratify their statements before me, said parties being personally known to me, to be the persons above named, and swear that this is an act of their free will and deed, in the presence of the witnesses Don Candido del Rosario y Espiritu and Don Manuel Sansano y Arciaga, both clerks, of lawful age and residents of this City, who sign with them this document which I authorize as Notary Public under my signature

and the seal of my office, on the day, month and year above mentioned: to all of which I certify.

(Sgd.)	ISABEL PALET, <i>Widow of Aldecoa,</i>
(Sgd.)	JOAQUIN IBANEZ DE ALDECOA,
(Sgd.)	CANDIDO DEL ROSARIO,
(Sgd.)	MANUEL SANSANO.

[NOTARIAL SEAL.]

(Sgd.)	ENRIQUE BARRERA Y CALDES,
	<i>Notary Public.</i>

My commission expires January 1st, 1905.

425 The foregoing document has been registered by the entries and notations made at folios 200, 191, bis, 203, bis, 188, bis, of Volume 13 of Binondo Section, and 48 of Archive; property number- 91, 92, 93, and 111 duplicate, inscriptions 7, 7, 7, and 8, and 137 and 210, bis, of Volume 13, Books 2nd and 8th of Malate Section; properties No. 93 duplicate and 384, inscription 5, and notation letter B. Manila, April 28, 1906.

[Seal of the Registry of the Property.]

(Sgd.)	CLAUDIO GABRIEL,
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426

EXHIBIT "U."

Emancipation.

In the city of Manila, Philippine Islands, this thirty first day of July, nineteen hundred and three; before me, Enrique Barrera y Caldes, Notary Public of the same, personally appeared:

Dona Isabel Palet y Gabarro, widow of Don Zoilo Ibanez de Aldecoa y Aguirre, property holder, of lawful age, and resident of this City, without exhibiting any cedula on account of being exempt therefrom by reason of her sex:

And Don Zoilo Ibanez de Aldecoa y Palet, without any special profession, over eighteen years of age, single, and resident of this City, with cedula number one hundred and seventy thousand nine hundred and twenty-one, issued by the Collector of Internal Revenue of this City for the present year.

And having, as I believe they have, legal capacity to execute this instrument, Dona Isabel Palet y Gabarro, states:

That acknowledging in her son, Don Zoilo Ibanez de Aldecoa the faculty to rule his person and manage his property, renounces for herself the parental authority (*patria potestad*) which she heretofore had over his person and property, and by virtue hereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire, just

427 as if he were of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents, either public or private, which may be necessary for the above named purposes.

Don Zoilo Ibanez de Aldecoa y Palet, on his turn states: that he

accepts the emancipation granted him by his mother by virtue of the present document, being grateful to her for the benefit she thus confers on him.

In witness whereof, the above named parties ratify their statements before me, said parties being personally known to me, to be the persons above named, and swear that this is an act of their free will and deed, in the presence of the witnesses Don Candido del Rosario y Espiritu and Don Manuel Sansano y Arciaga, both clerks, of lawful age and residents of this City, who sign with them this document which I authorize as Notary Public under my signature and the seal of my office, on the day, month and year above mentioned; to all of which I certify.

(Sgd.) ISABEL PALET, *Widow of Aldecoa.*

(Sgd.) ZOILO IBANEZ DE ALDECOA.

(Sgd.) CANDIDO DEL ROSARIO.

(Sgd.) MANUEL SANSANO.

[NOTARIAL SEAL.]

(Sgd.) ENRIQUE BARRERA Y CALDES,
Notary Public.

My commission expires January 1st, 1905.

428 The foregoing document has been registered by the entries and notations made at folios 200 191, bis, 203, bis, 188, bis, of Volume 13 of Binondo Section, and 48 of the Archive; property number- 91, 92, 93, and 111, duplicate, inscriptions 7, 7, 7, and 8, and 137 and 210, bis, of Volume 13. Books 2nd and 8th of Malate Section; properties No. 93 duplicate and 384, inscription 5, and notation letter B. Manila, April 28, 1906.

Seal of the Registry of the Property.

(Sgd.) CLAUDIO GABRIEL.

PLAINTIFF'S EXHIBIT "V."

This Memorandum of Agreement, made and executed this 13th day of June, 1907, by and between Don Joaquín Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet, and Doña Isabel Palet y Gabarro, viuda de Aldecoa, all of them the parties of the first part, Aldecoa and Company in liquidation the party of the second part, and the Hongkong and Shanghai Banking Corporation, the party of the third part:

Witnesseth: that by, and in consideration of a certain bond executed by the party of the third part, for the sum of Fifty Thousand Pesos (P50,000.00), in the suit which is about to be filed by
429 the party of the second part against Mr. Alexander S. Macleod, over certain shares of stock of the "Pasay Estate Co. Ltd.," the value of which amounts to One Hundred and Sixty Thousand Pesos (P160,000.00) Philippine Currency, which bond is to be furnished in order to obtain an injunction against the sale of said

shares of stock or the proceeds thereof while the case be pending in Court.

The parties of the first part and of the second part agree and covenant as follows:

1. That the proceeds of said suit against said Alexander S. Macleod, in case the judgment rendered be favorable to the plaintiff, shall be applied in full to the payment pro tanto of the sum which the firm of Aldecoa and Company, or Aldecoa and Company in liquidation, owes to the party of the third part, deducting only from said proceeds the necessary expenses of said action, including the fees of the attorneys who are to represent the said plaintiff, the balance to be delivered to the creditor bank for the purpose above mentioned.

2. That in case said Hongkong and Shanghai Banking Corporation, should incur in any liability as bondsman in said suit, the obligation of the firm of Aldecoa and Company to indemnify said Bank from said liability shall be added to the sum which the said firm owes the said Bank and the payment thereof shall be secured by the same mortgages executed, mentioned and described in the instrument which the parties of the first and of the second part executed in its favor on the 23rd day of February, 1906, (a copy of which is attached to and made part of this document) under the terms and conditions of said mortgage.

3. That the Hongkong and Shanghai Banking Corporation shall not be directly or indirectly liable for the payment of the costs or expenses of the above mentioned suit, that is to say, for the Court fees, attorneys' fees, etc., etc.

4. That the contracting parties above named bind themselves to execute whatever documents or instruments may be necessary to secure or duly record the purposes above stated.

In witness whereof, the parties hereto sign this document in Manila this 13th day of June nineteen hundred and seven (1907).

ISABEL PALET AND
ZOILO IBANEZ DE ALDECOA.

(Signed)

p. p. J. M. Y. DE ALDECOA.

ALDECOA AND COMPANY,

In Liquidation,

(Signed)

By WILLIAM URQUHART.

(Signed)

JOAQUIN I. DE ALDECOA.

For the Hongkong & Shanghai Banking Corp'n,

(Signed)

A. A. STEPHEN, *Manager.*

In the presence of:

(Signed) CHARLES C. COHN.

431 UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

In the City of Manila, this 13th day of June, 1907, before me personally appear Don Jose Maria Ibanez de Aldecoa, as attorney in fact and legal representative of Doña Isabel Palet y Gabarro viuda

de Aldecoa, and of Don Zoilo Ibañez de Aldecoa y Palet; Don Joaquín Ibañez de Aldecoa y Palet by his own right, Mr. William Urquhart, as liquidator of the firm of Aldecoa and Company in liquidation, and Mr. Alexander Gordon Stephen on behalf of the Hongkong and Shanghai Banking Corporation, whom I know to be the persons who executed the foregoing document which they ratify and state the same to be an act of their free will and deed.

Said gentlemen exhibited their Certificates of Cedula, the first, No. 674, issued at Manila the 6th of June, 1907; the second, No. B164, 876, issued at Manila the 13th of May, 1907; the third, No. A1,488, 603, issued at Manila the 8th of February, 1907; and the last, No. A1,479,705, issued at Manila the 18th of January, 1907.

In witness whereof, I have hereunto set my hand and official seal, at the foot of this certificate, the day, month and year above said:

[NOTARIAL SEAL.]

432 (Signed)

D. R. WILLIAMS,
Notary Public.

My Commission expires December 31st, 1908.

NOTE—The instrument of February 23 mentioned in the body of the foregoing agreement and made part thereof, is hereby omitted by common agreement of the parties for the reason that it is only a copy of the plaintiff's Exhibit "A."

PLAINTIFF'S EXHIBIT "W."

Act No. 35: In the City of Manila, on the 28th day of August, 1903, the gentleman whose name appear in the margin having convened in meeting proceeded to discuss the following matter:

The Emancipation of Messrs. Joaquín and Zoilo Ibañez de Aldecoa having been declared in accordance with the laws in force the meeting resolved that the same should be present, as they were, at that session inasmuch as they could not be represented as minors by their mother.

Those present having therefore agreed to the motion, the
433 meeting was adjourned and the present Minutes were extended and were signed by the partners present on their own behalf and in behalf of the persons by them represented.

For myself and those by me represented,

(Sgd.) ISABEL P. VIUDA DE ALDECOA.

For myself and those by me represented,

(Sgd.) ALEJANDRO S. MACLEOD.

(Sgd.) GUILLERMO GARGOLLO.

(Sgd.) JOAQUIN IBAÑEZ DE ALDECOA.

(Sgd.) ZOILO IBAÑEZ DE ALDECOA.

On the left margin of this Act the following names appear: "Doña Isabel Palet viuda de Aldecoa on her own behalf and on behalf of her minor daughter Cecilia Ibañez de Aldecoa and her

daughter Doña Josefa Tremoya de Mancebo who has given her power of attorney to act for herself and as guardian of Doña Isabel and Don Modesto de Cortabitarte y Tremoya.—Don Alejandro S. Macleod on his own behalf and on behalf of Don Sixto Jesus Alvarez Perez.—Don Guillermo Gargollo.—Don Joaquin Ibañez de Aldecoa y Palet.—Don Zoilo Ibañez de Aldecoa y Palet.”

PLAINTIFF'S EXHIBIT “X.”

Act No. 36.

In the City of Manila, on the 15th day of January, 1904, the gentlemen whose name- appear in the margin having convened in meeting proceeded to discuss the following matter:

* * * * *

The partner Don Zoilo Ibañez de Aldecoa states to the Manager Mr. Macleod that on his own behalf and on behalf of the persons whom he represents at this meeting, he desires to know the contract which the firm has with Messrs. Macleod and Company for the business in Surigao. The Manager accedes to this request and states that the contract between both firms is a verbal one and consists in buying without competition and at the same prices the hemp from said place. This agreement originated from a competition which started in the time of Mr. Alvarez which competition proved disastrous to both firms, and from this the understanding came. A resolution is adopted to the effect that if the firm of Macleod and Company respects the agreement it is beneficial to continue in that manner, but if not it is not convenient to be bound by an agreement which the other party cannot comply with.

* * * * *

There being no further matters to discuss at this meeting which was called to order at the request of Messrs. Tremoya and Aldecoa, it was adjourned at half past four in the afternoon, the present 435 Minutes being extended which, after having been read and approved by those members present, is signed by them for themselves and for the persons by them represented.

For myself and those by me represented,

(Sgd.)

ZOILO IBANEZ DE ALDECOA.

(Sgd.)

CECILIO TREMOYA.

(Sgd.)

ALEJANDRO S. MACLEOD.

On the left margin of the foregoing Act the following names are read: Don Alejandro S. Macleod on his own behalf.—Don Cecilio Tremoya on his own behalf. Don Zoilo Ibañez de Aldecoa on his own behalf and on behalf of Doña Isabel P. Viuda de Aldecoa as capitalist-partner and as guardian of Doña Cecilia Ibañez de Aldecoa and Isabel and Modesto de Cortabitarte.

PLAINTIFF'S EXHIBIT "Y."

Act No. 39.

In the City of Manila, and at the place of business of Messrs. Aldecoa and Company, the gentlemen whose names appear on the margin met in session wherein the following matters were discussed:

* * * * *

Children of Aldecoa.—It is resolved to give Messrs. Zoilo and Joaquin Ibañez de Aldecoa the right to be heard and to vote in all matters and at all meetings of the firm, and inasmuch as under the contract of partnership they had not the right to do so these rights are hereby granted to them.

* * * * *

And there being no further matters to discuss, the meeting is adjourned at 4:30 p. m.

Manila, June 1st, 1905.

On account of having mislaid the rough draft of this Act it appears after Act No. 40 although by its date it can be inferred that it took place before.

(Sgd.)

JOAQUIN I. DE ALDECOA.

p. p. ZOILO I. DE ALDECOA.

(Sgd.)

FERNANDO ZOBEL.

(Sgd.)

JOAQUIN I. DE ALDECOA.

A. S. MACLEOD.

p. p. W* URQUHART.

A. S. MACLEOD.

p. p. CECILIO TREMOYA.

(Sgd.) FERNANDO ZOBEL.

On the left margin of the foregoing Act, the following names are read: Messrs. A. S. Macleod, Zoilo Ibañez de Aldecoa, Joaquin Ibañez de Aldecoa, Cecilio Tremoya, William Urquhart and Fernando Zobel (as a good friend of the house and as son-in-law of the widow of Aldecoa).

PLAINTIFF'S EXHIBIT "Z."

Act No. 40.

In this City of Manila, and at the place of business of Messrs. Aldecoa and Company the gentlemen whose names appear on the margin met in session whereat the following resolutions were adopted:

* * * * *

III. By reason of the temporary absence of Mr. Urquhart it has been thought convenient to empower Mr. Zoilo Ibañez de Aldecoa to sign "per pro" the firm's name and with the assent of the partner, Doña Isabel Palet viuda de Aldecoa, although taken into account that this gentleman is still a minor, this resolution shall have no effect before July 1st, next.

Said Don Zoilo being at present somewhat delicate in health it is agreed that his place as cashier be filled by Don Joaquin Ibañez de Aldecoa with the monthly salary of P100.00.

* * * * *

And there being no further matters to discuss the meeting was adjourned of which this Act is a faithful record.

Manila, April 9, 1906.

(Sgd.)

JOAQUIN I. DE ALDECOA.

p. p. ZOILO I. DE ALDECOA.

(Sgd.)

FERNANDO ZOBEL.

(Sgd.)

JOAQUIN I. DE ALDECOA.

A. S. MACLEOD.

p. p. W. URQUHART.

A. S. MACLEOD.

(Sgd.) FERNANDO ZOBEL.

At the left margin of this Act the following names are read: "Messrs. A. S. Macleod.—W. Urquhart.—J. Y. de Aldecoa.—Z. Y. de Aldecoa.—F. Zobel.—A. Hidalgo, (Secretary.)"

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PLAINTIFF'S EXHIBIT "AA."

Know all by these presents; that Mr. William Urquhart, merchant, of lawful age, single and resident of the City of Manila, as liquidator of the firm of Aldecoa and Company, duly authorized and empowered to enter into and execute the present contract, the party of the first part; and Mr. Alexander Gordon Stephen, of lawful age, married and resident of this City, as Manager of the Hongkong and Shanghai Banking Corporation of this City, by virtue of powers of attorney granted him on February 14, 1894, before the Notary of the British Colony of Hongkong Mr. G. C. Master, and recorded in the Mercantile Registry of the City of Manila on the 25th day of May, 1906, the party of the second part,

Make it known:

Whereas, by an instrument executed on the 23rd day of March, 1906, before the Notary Public of Manila, Don Jose Maria Rosado, the firm of Aldecoa & Company held open in favor of Don Martin de Achaval, merchant and resident of the Municipality of Legaspi, province of Albay, a credit in account current, up to the sum of twenty thousand pesos (P20,000.00) Philippine currency, said Don Martin de Achaval binding himself to pay to said concern an in-

terest of nine per cent (9%) per annum for the sums which he might owe the said firm on account of said credit:

Whereas, the credit was given without any fixed term,
439 it being stipulated that any one of the contracting parties could close and terminate the same, advising the other two months in advance, agreeing that at the expiration of the two months' term the debtor Don Martin de Achaval should pay to Aldecoa & Company one half of what he might then be indebted to said firm, together with the corresponding interests, the other half to be paid by monthly installments of one thousand pesos (P1,000.00) each plus interest, and it was likewise stipulated that during the two months prior to the closing of said credit the debtor could not draw against the firm of Aldecoa & Company even if his debit balance should not reach the amount of the credit granted in current account;

Whereas, a liquidation having been made of said account current on January 31, 1906, there appeared to be a balance of P22,-352.63 Philippine currency, against Don Martin de Achaval and in favor of the firm of Aldecoa & Company, which amount is what he is indebted unto this said concern, together with the interest from said date;

Whereas, Don Martin de Achaval in order to secure the payment of whatever amounts he might owe to the firm of Aldecoa & Company by reason of said credit and the interest thereon executed in favor of Aldecoa & Company a voluntary special mortgage over one half undivided interest of which said Don Martin de Achaval is the owner in the following real estate, to wit:

440 (A) Hemp plantation land situated in the place of Cotmon of the barrio of Ponso in the Municipality of Polangui, measuring one hundred sixty hectares, twenty nine ares and thirty seven centiares, bounded on the North by river Amuguis and by land of the Chinaman Saua, Juan Benipayo, Fabiano Benipayo, Gregorio Sambitan and Pedro Lauraya; on the East by property of Eugenic Casuco, Pedro Saonar, Juan Ante, Fabiano Benipayo, Pedro Foruria, Margarito Rosantina and Angelo Surzabal; on the South by lands of Mariano Alcalá, Matea Refana, Casimiro Sarte, Mariano Rejesus Juan Florin, Chino Tena and Emilia Solana; and on the East with property of Saturnino Alano, Ramon Sapurco, Teodora Salarson, Mariano Caña, Narciso Gonzaga, Pedro Sacnar, Marcela Desalarson, the river Cotman and Antonio Diaz.

(B) Hemp plantation land situated about fifty meters Southeast of the preceding lot in the place of Cangon, barrio of Ponso, measuring fourteen hectares, forty four ares and thirty seven centiares, bounded on the North by Sinforosa Sadión and Ciriaco Campo; on the East by property of Esteban Rejesus; on the South by lands of Francisco Sario and river Cotmon; and on the West by lands of Pedro Foruria and Juan Ante.

(C) Hemp plantation land situated in the place of Cotmon
441 barrio of Ponso, measuring one hectare, forty ares and sixty two cent-ares, bounded on the North, East and West by lands of Antonio Diaz and on the South by river Cotmon.

(D) Hemp plantation land situated in the place of Maynaga, barrio of Ponso, measuring one hectare, eighty nine acres and thirty seven cent-ares, bounded on the North by lands of Domingo Serralde, which extend to the East wherein it adjoins also lands of Juan Sapaola; on the South by part of the former and lands of Zacarias Sarete and the creek Maynaga; and on the West by lands of the same Domingo Serralde.

These pieces of property are described more extensively at pages 3 to 14 inclusive of said deed of March 23, 1906, by *cortes* and distances according to the instructions of the Court of Land Registration for the growing of plants, to which descriptions reference is made hereby and the same are made part of this document.

Whereas, the debtor Don Martin de Achaval can not satisfy the credit which he owes in the manner and within the time specified in the aforesaid instrument of March 23, 1906, and in place thereof he offers to pay the same in the following installments: (a) on or before July 30, of the present year 1907, the sum of six thousand pesos (P6,000.00) Philippine currency; (b) on or before 442 June 30, 1908, the sum of eight thousand pesos (P8,000.00) Philippine currency; and (c) on or before June 30, 1909, the

balance, to wit, the sum of eight thousand three hundred fifty two pesos and sixty three centavos (P8,352.63) Philippine currency, and, besides, all interest due from January 1, 1907, at the rate of seven per cent (7%) per annum; but on condition that in case of war or blockade in the province of Albay, or Camarines, or in Manila, the terms agreed upon for the payment of said credit of twenty two thousand three hundred fifty two pesos and sixty three centavos (P22,352.63) Philippine currency, and corresponding interest thereon, shall be extended for one year more beginning from the date when it may have ceased;

Whereas, the firm of Aldecoa & Company is at present indebted to the Hongkong and Shanghai Banking Corporation in a sum amounting to over four hundred seventy thousand pesos (P470,000.00) Philippine currency on the credit on account current which said banking corporation held open in favor of the firm of Aldecoa & Company by virtue of document dated February 23, 1906;

Whereas, said mercantile concern, Aldecoa & Company by said instrument of February 23, 1906, bound itself to reduce its debit balance in said Bank to the sum of four hundred and twenty five thousand pesos (P425,000.00) Philippine currency on the 443 31st day of December, 1906, and to continue reducing said balance in the minimum annual sum of fifty thousand pesos (P50,000) Philippine currency, a condition which up to the present has not been complied with;

Whereas, by clause VIII of said document of February 23, 1906, the following was stipulated: "In the event that the debtor firm shall succeed in reducing the credit held in its favor in the provinces by means of the total or partial payment unto said debtor firm by its debtors, the sum which the firm does collect shall be deposited in the Hongkong and Shanghai Banking Corporation on account of its

debt, as reductions, in addition to those stipulated in the previous clauses.

Whereas, the liquidator of the firm of Aldecoa & Company thinks that it is convenient and advantageous for said concern to cede to the Hongkong and Shanghai Banking Corporation the credit which it has against said Don Martin de Achaval above referred to, as an additional reduction of the balance which the firm of Aldecoa & Company owes to the bank, in accordance with the stipulations contained in clause VIII of said instrument of February 23, 1906;

Whereas, the Hongkong and Shanghai Banking Corporation is willing to accept this cession on condition that the firm of Aldecoa & Company shall answer for the solvency of the debtor Don
444 Martin de Achaval up to the 1st day of January, 1910.

Therefore, Mr. William Urquhart, as liquidator of the firm of Aldecoa & Company does hereby cede to the Hongkong & Shanghai Banking Corporation the said credit of twenty two thousand three hundred fifty two pesos and sixty three centavos (P22,352.63) Philippine currency which Don Martin de Achaval owes said firm, as well as all interest due from the 1st day of January 1907 up to the present date at the rate of seven per cent (7%) per annum, as additional reduction of the balance which the firm by him represented owes to the Hongkong and Shanghai Banking Corporation in accordance with the stipulation contained in clause VIII of said instrument of February 23, 1906, assigning to said banking corporation whatever rights and actions the firm of Aldecoa & Company has over said credit.

The firm of Aldecoa & Company guarantees and responds for the solvency of the debtor Martin de Achaval up to the 1st day of January of the year 1910.

Mr. Alexander Gordon Stephen, in the name and on behalf of the Hongkong and Shanghai Banking Corporation accepts this cession in the terms above stated and he hereby declares to have credited on his books the account current of Aldecoa & Company of this date with the amount of the credit ceded hereby.

445 In witness whereof, we sign this document, in Manila, this 8th day of February, 1907.

ALDECOA & CO.,

In Liquidation,

By WM. URQUHART.

For the Hongkong & Shanghai Bank'g Corp'n.

(Sgd.)

A. STEPHEN,

A. G. *Manager.*

Witnesses:

(Sgd.) JOHN W. HAUSSERMANN.

(Sgd.) JOSE MORENO LACALLE.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila, this 8th day of February, 1907, before me personally appeared Mr. William Urquhart and Mr. Alexander

Gordon Stephen, whom I know to be the persons who signed the present document and ratified the same to be of their own and voluntary act and deed. Messrs. William Urquhart and Alexander Gordon Stephen exhibited their respective certificates of cedula No. A-1,488,803 and No. A-1,479,705, issued in Manila the first the 8th of February, 1907, and the second the 18th of January, 1907.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day, month and year above mentioned.

[NOTARIAL SEAL.] (Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires December 31, 1908.

446

PLAINTIFF'S EXHIBIT "BB."

8519.

Know all by these presents that:

Whereas, a certain credit of twenty-two thousand three hundred fifty-two pesos and sixty-three centavos (P22,352.63) Philippine currency, formerly owed by Martin de Achaval to the firm of Aldecoa and Company in liquidation, was transferred, and assigned by a public instrument duly executed and ratified on the *withth* (8) day of February nineteen hundred and seven (1907) in favor of the Hongkong and Shanghai Banking Corporation; and

Whereas, said cession has been questioned and put in issue in a complaint filed by said Martin de Achaval;

Therefore, in consideration of the foregoing and of the mutual agreements hereinafter stated, the respective parties hereto by these presents ratify and confirm in all its parts the said contract of February eighth (8) nineteen hundred and seven (1907) hereby declaring that the same has been in full force and effect at all times from the date of its execution, without having been revoked, cancelled, changed, altered, modified or amended in any manner;

And the undersigned firm of Aldecoa and Company in
447 liquidation by these presents again declares that it has adjudicated, transferred, sold *a* and assigned in payment of a debt and by these presents—sell, transfer and assign in favor of the Hongkong and Shanghai Banking Corporation the above said credit which prior to said eighth (8) day of February, nineteen hundred and seven (1907), was owed by Martin de Achaval as aforesaid, together with the real right of mortgage mentioned and referred to in the instrument of February eighth (8) nineteen hundred and seven (1907) hereinbefore mentioned to which the parties hereto expressly refer and make part of this document and said firm of Aldecoa and Company again guarantees the solvency of the said Martin de Achaval until the first (1) day of January, nineteen hundred and ten (1910).

And the Hongkong and Shanghai Banking Corporation again declares that it has accepted the cession of the above named credit in the terms stated in this document and in the document of February

eight (8) nineteen hundred and seven (1907), and that said corporation has bound itself to credit the account of Aldecoa and Company in liquidation with the full amount of the said credit.

In witness whereof the contractive parties respectively sign
448 and seal this document this fourth (4) day of March nineteen hundred and nine (1909).

For Aldecoa and Company in liquidation,

(Sgd.)

WILLIAM URQUHART.

For the Hongkong and Shanghai Banking Corporation,

(Sgd.)

A. G. STEPHEN, *Manager.*

Signed in the presence of:

(Sgd.) ANTONIO SANZ.

(Sgd.) CHARLES C. COHN.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

This fourth day of March nineteen hundred and nine personally appeared before me William Urquhart, as liquidator of the firm of Aldecoa and Company in liquidation and Alexander Gordos Stephen, as Manager of the Banking concern Hongkong and Shanghai Banking Corporation, whom I know to be the persons who executed the foregoing document and ratified the same as an act of their own free will and granting. Mr. William Urquhart exhibited his certificate of registration No. F-1,298,536 issued in the City of Manila, on January 21, 1909; and Mr. Alexander Gordon Stephen also exhibited his certificate of registration No. 5921 issued also in the City of Manila on January 22, 1909.

[NOTARIAL SEAL.]

(Sgd.)

JOSE MA. ROSADO Y. CALVO,

Notary Public.

My commission expires on December 31, 1910.

(P0.20 documentary stamp.)

449

PLAINTIFF'S EXHIBIT "CC."

8519.

MANILA, March 22, 1909.

The Hongkong and Shanghai Banking Corporation, Manila.

GENTLEMEN: Your letter of the 19th instant at hand, and although the proposition made therein to us is not as good or as advantageous for us as that which you made us on the 8th instant, however to show you our good will we have no objection to accept the same it being therefore understood that you propose and we accept, the following:

1. We accept P91,853.57 in total payment of Zubeldia's debt which debt shall be paid by said Mr. Zubeldia in quarterly instalments of P3,000 each.

2. You shall credit us in our account P16,221.75 as interest of Mr. Zubeldia's debt until December 31, 1908.

3. From said date, December 31, 1908, you shall credit our account quarterly with the interest which may correspond to us of Mr. Zubeldia's debt at the rate of 8%.

Hoping that you shall find this to your satisfaction, we again remain,

Yours very sincerely,
For Aldecoa and Company in liquidation,
(Sgd.) WILLIAM URQUHART.

450

PLAINTIFF'S EXHIBIT "CCC."

8519.

No. A. O. 191,918. There is a stamp of a state. There is a seal which reads: Bank (illegible)—July 16, 1907—Manila. There is a three peseta stamp of the ninth class. There is a seal which reads: Office of the Notary Don Jose Criado y Fernandez Pacheco—Madrid. There as a seal which reads: El Varadero de Manila—October 22, 1909—Compañia Anónima.

Number Two Hundred and Eighty-six.

In the city of Madrid, this 17th day of April, 1907; before me Don Jose Criado y Fernandez Pacheco, a member of the Illustrious notarial College of this Court and resident of the same,

The Most Excellent Doña Isabel Palet Gabarro widow of Aldecoa, of lawful age, widow, householder and resident of this City, domiciled at No. 20 Calle Arenai, with personal cedula of the second class, issued on the 11th of June last year, No. 37,348.

And having in my judgment the necessary legal capacity to execute this substitution of power of attorney, she exhibits to me for that purpose the power of attorney given to her in the City of Manila on the 24th of October, 1905, before the Notary Public of that City, Don Jose Maria Rosado, by her two sons Don Joaquin and Don Zoilo Ibañez de Aldecoa y Palet, who although under age are emancipated by voluntary concession of their mother Doña Isabel Palet,

451 which power of attorney literally copied together with the authentications is as follows: "Know all by these presents: that we Don Joaquin Ibañez de Aldecoa y Palet, 21 years of age and Don Zoilo Ibañez de Aldecoa y Palet, 20 years of age, both single and residents of this City emancipated by voluntary concession of our mother Doña Isabel Palet y Gabarro, by this instrument make it known:

That we give and grant to our mother Doña Isabel Palet y Gabarro, dedicated to the labors proper of her sex, of lawful age, widow and resident of Madrid, Spain, as sufficient and ample a power of attorney as it may be required or necessary, for her acting on our name and behalf and making use of our rights and action to do and execute the following acts:

To administrate and manage all kinds of real and personal property, livestock, business and shares, belonging to us; letting our real estate for the rent, time and conditions which she should deem convenient, collecting the rent, fruits and profits thereof attending to the proper preservation, repair and improvement or development of said property; investing to that end any sum or sums of money which she may deem convenient; ousting the tenants and lessees and doing whatever other acts might be necessary and should be done by a faithful, diligent and lawful administrators.

To demand payment or collect and receive any or all sum or sums of money, values, dividends, and interests which may belong
452 or may be due to us by any person or persons, corporations, associations, companies or government offices by reason of any title, action or right; executing to that end whatever may be necessary either judicially or extrajudicially; and for all moneys, values, dividends, interests, etc., so demanded, collected and *perceived*, to sign and issue the receipts, vouchers, certificates of payment and all other documents which should be required; cancelling all mortgages or bonds or whatever incumbrances which the property of the debtors or bondsmen might be subject to.

To pay, deliver and give the goods, chattels and any sum or sums of money which we may be obliged to deliver or pay, as well as all taxes, charges and contributions which any of our property may be subject to, demanding and keeping all receipts and other evidences of payment of goods, chattels or money so delivered or paid.

To give and take in loan any sums of money or perishable things for the interest, time and condition which she may deem convenient; collecting or paying the principal or the interest when they respectively become due executing and signing the corresponding public or private instrument and doing all these operations with or without mortgage, pledge or personal security.

453 Demand an accounting from all those persons who should account to us for any reason or in any manner; to liquidate and examine the same, rejecting or approving the accounts so rendered according to the merits thereof; to receive the balance there appearing in our favor, giving receipts, acquittances and other certificates of payment therefor.

To draw, endorse, accept, intervene and negotiate any drafts, exchange notes, bills, letters of credit, certificates of payment, notes, *vales*, promissory notes to bearer or to order, and all other kinds of negotiable instruments; paying or collecting the same on maturity or protesting them for non-acceptance or non-payment, making use, in this case, of all the rights granted by the laws in force, in order to recover the value thereof, together with the interest, expenses and damages incurred thereby against whomsoever they might be exercised.

To place in the Banks, associations or corporations or in possession of any private person or persons, all kinds of monies in current account, in custody, in deposit or in any other manner, executing and doing whatever might be necessary to draw on said funds, to receive and collect them; signing and authorizing checks, orders, vouchers,

bills of lading, and whatever other documents might be necessary.

454 To constitute or organize in our name with the person or persons they may deem convenient all kinds of associations or mercantile corporations, whether partnerships, limited partnerships or any other kind, for the development of any business which she may deem convenient to our interests, and therefore, we expressly empower our said attorney to stipulate whatever may be convenient in regard to our share in the business and the name under which the company is to operate, the place of residence of said company, the purposes of the same, its term of duration, the person or persons who are to take charge of the management, direction and use of the firm name, the proportion in which the partners or members are to share in the losses or profits which may result, the form in which the business of the firm is to be carried *of* and to proceed in due time to the winding up of the affairs and business of the company or association, as well as to stipulate and agree on any other case or particulars to which the partnership may be directed; being also empowered to extend, modify or dissolve the associations which may be formed in accordance with the agreement or conditions which she may consider most beneficial to us, and to execute and sign by reason of the powers hereby given in this clause, the necessary public documents and all other papers or instruments which might be deemed necessary.

455 To attend to whatever meetings we may have the right to, whether said meetings be of mercantile or civil associations or corporations or of any other kind, giving there at her opinion, agreeing with the resolutions of the majority if she deems it convenient, or disagreeing with it, voting with the majority or protesting against any resolution if necessary, demanding her opinion and vote to be recorded in the minutes of said meetings, voting thereon in favor of what she might deem convenient, and doing at said meetings whatever we ourselves would do if present.

To accept either generally or under inventory the inheritances either under will or intestate to which we may have a right, filing the proper papers and all other documents and records necessary for the declaration of heirs; following and continuing the same up to the complete termination of the partition proceedings; intervening in each and every one of the operations of inventory, appraisal, liquidation, partition and distribution of the inheritance, approving said operations if she should think it convenient, or objecting thereto if necessary, appointing or asking for the appointment of appraisers and accountants to carry out the liquidation and partition; agreeing

• — or accepting the nomination made by the other interested parties, taking possession and charge of all kinds of property which
456 may be adjudicated to us, executing and signing whatever public or private instruments may be required, said instruments to contain the clauses and other legal requisites demanded by law for the validity thereof, stating thereon the limitations, easements and incumbrances upon the property thus adjudicated and

finally executing, doing and performing any and all acts which may be required for this purpose.

And if necessary to represent *that* in all judicial matters to be submitted before the Court of the Justice of the Peace, Municipal Courts, Courts of First Instance, Supreme Courts of Justice and other ordinary tribunals or of any other special jurisdiction; appearing before the senate to file whatever civil or criminal actions may be necessary prosecuting all criminals civil and ordinary cases, interventions, administrations, bankrupts subsidings and all other actions provided by law; filing the complaints, answers, set-offs, cross-complaints, indictments, and whatever other pleadings be necessary; filing demurrers; offering and abusing oral and documentary evidence expert evidence and all other proofs admitted by law; objecting and contradicting whatever might do to the contrary; accepting all kinds of notices summonses and citations; refusing the officers of the administration of justice; filing bills of exception and making an especial proceeding such as suits for injunction, receiverships, partition, prohibition, mandamus certuarius contempt, foreclosure of mortgages, expropriation proceedings, replevin; and taking, appeals and asking for new trials and whatever other remedies may be granted against judgments or orders given through fraud accident or error; desisting from the remedies and other proceedings which she may have applied for; asking for demands, detention of the defendant; habeas corpus, attachments, releases, valuations, sale of property and execution of judgments and doing all the acts which the laws of procedure may provide for the conduct and determination of the matters in which she may intervene.

And finally to substitute in all or in part this power of attorney in favor of the person or persons which she may designate and to revoke said substitution and make new ones. For all of which acts we grant our said mother Doña Isabel Palet y Gabarro the most ample and complete power of attorney, promising hereby to approve and hold valid whatever she might do or execute by virtue hereof, under the most solemn obligation in law. In witness whereof we sign this instrument in Manila this 24th day of October, 1905.

JOAQUIN IBAÑEZ DE ALDECOA.
ZOILO IBAÑEZ DE ALDECOA.

458

Signed in the presence of:

POT. VILL. BERNABE.
B. PABALAN.

UNITED STATES OF AMERICA.

City of Manila, Island of Luzon, Philippine Islands, ss:

In the city of Manila this 24th day of October, 1905:

Before me personally appeared Don Joaquin Ibañez de Aldecoa y Palet and Don Zoilo Ibañez de Aldecoa y Palet whom I know to be the persons who executed the foregoing document which they ratified and state that the same is an act of their own free will and granting. Said gentlemen exhibited their cedula Nos. AA-323,535 and

AA-320,441, issued by the Collector of the Internal Revenue of this city on March 24 and 17 of the present year 1905, respectively. In witness thereof I have my name at the foot of this certificate and place my official seal on the day, month and year aforesaid.

[NOTARIAL SEAL.]

JOSE MARIA ROSADO,
Notary Public.

My commission expires on December 31st, 1906.

Authentication: Number 308. Seen at this Consulate General of Spain. Good for the authentication of the signature of Don Jose Maria Rosado Notary Public of Manila—Manila Oct. 24, 1905—The acting Consul General of Spain—Camilo Bargiela—Seal of the Consulate General of Spain in Manila. No. 3550—Seen at 459 the office of the Minister of the State. Good for the authentication of the signature of Don Camilo Bargiela, Vice Consul of Spain in Manila,—Madrid April 12, 1907—P. The under secretary The Marquis of Medina—There is a seal of the office of the Minister of the State.

Note of reimbursement: The foregoing power of attorney is reimbursed by the undersigned with two sheets of state paper one of the 7th class No. 27859 and other of the 8th class No. 392,973 amounting to seven pesetas, the lower part of which with the corresponding note of reference is attached hereto. Madrid April 17th, 1907.—Jose Criado F. Pacheco—Then comes the reimbursed paper.

The foregoing agrees literally with the original thereof which I return to the lady who exhibits the same to me; to which I certify. And said lady making use of the power of substitution granted to her and which she affirms has never been revoked suspended or limited; states: that she substitutes the whole of this power of attorney in favor of Don Jesus Jose Maria Ibañez de Aldecoa y Abaroa of lawful age, single, and resident of Lequeitio, province of Viscaya, that he may make use of each and every one of the powers conferred to said lady by virtue of said letters of attorney and specially:

To present himself at the domicile of the mercantile firm 460 of Aldecoa and Company in Manila and demand from the liquidator, Mr. Urquhart, the presentation of the books of said firm and of all the documents which may be evidence of the assets and liabilities of said firm, and to examine said books and documents as well as the manner and condition in which the liquidation is being made; approving or modifying them and ratifying or annulling the operations made and to be made, as he may deem convenient to the interest of the partnership and especially to that of Messrs. Joaquin and Zoilo Ibañez de Aldecoa y Palet, making use of whatever rights and actions may belong to the same by reason of the partnership contract; to act and decide upon everything which may pertain to the partnership and the liquidation thereof; to exercise his influence in the best manner for the change of the personnel of the liquidation if he thinks convenient to modify or substitute the same; to attend to whatever meetings may be held, voting as he

may desire, approving the resolutions taken or protesting against the same in the manner that might be most convenient; to compromise any debt, question of difference; to demand delivery and take charge of all the property and rights which her said sons Joaquin and Zoilo Ibañez de Aldecoa may have in the liquidation, whatever be their kind or nature; and to do in the premises whatever he may deem convenient and beneficial to the said Joaquin and Zoilo and
 461 which they might do if present, without any limitations; executing and signing to that end the documents acquittances, vouchers, receipts liquidations, and whatever other public and private documents might be required or needed.

The Most Excellent lady executing these presents as mother of the principals Don Joaquin and Don Zoilo Ibañez de Aldecoa y Palet, in order to comply with the provisions of article 317 of the Civil Code, gives her consent to all those contracts which her substitute, hereby appointed, Don Jesus Jose Maria Ibañez de Aldecoa y Abaroa might execute by virtue of this substitution in the name and on behalf of said minors wherein said consent might be required in accordance with said article empowering her said substitute to state this consent on behalf of said lady in the documents wherein said contract may be extended.

The Most Excellent lady who executes this instrument, being present, together with the instrumental witnesses, Don Jose Alvarez y Cruz and Don Jose Garcia Camarena, both of lawful age and residents of this City and without any legal disability; and this substitution of power of attorney having been read by me, at the election of all, who after having been instructed of their right
 462 have waived the same, the first of the parties named gives her consent hereto and signs with the other two; and I, the notary, hereby certify that I know the lady who executes this document and the contents hereof; said document being written on this sheet and four more of the same class and series numbered 8,655,912 to 15 inclusive.

ISABEL PALET VIUDA DE ALDECOA.

JOSE ALVAREZ Y CRUZ.

JOSE GARCIA CAMARENA.

(Signed) JOSE CRIADO F. PACHECO.

I certify that this is the first copy of the original which under the number given at the beginning is kept at my current protocole of public instruments wherein an entry has been made hereof. I issue the same at the request of the Most Excellent lady who executed it, in a sheet of the 9th class, series A, No. 191,918, and 4 of the 11th class of the same series No. 9,143,032 to 35; and I sign, su-scribe and rubricate the same in Madrid on the date of its execution. The over-
 scripts—S—stamp—apelacio-su conse—valid.

(Signed and rubricated.)

[NOTARIAL SEAL.]

JOSE CRIADO F. PACHECO.

Fees: one peseta per sheet.
 No. 11 Arancel.

463 I, Maddin Summers, American Vice Consul in Madrid, Spain, hereby certify and make known to whom these presents shall come that the signature of Jose Criado F. Pacheco Notary Public of the College of the Province of Madrid, residing in Madrid, is genuine, and that said Jose Criado F. Pacheco was discharging his duties as a Notary of said district on the date of the annexed document, nothing to the contrary being known.

In testimony whereof I have hereunto set my name and seal of office at Madrid, this 23rd day of April, 1907.

(Sgd.)

MADDIN SUMMERS,
American Vice-Consul.

(There is a seal of the Consulate.)

There is a seal which reads: American Consular Service \$2 Fee Stamp, and on the seal: M. S.—23-4-07.

Fee No. 897. \$2.—U. S. gold equal 12 pesetas.

I, Florencio Gonzales Diez, Attorney at Law and Notary Public of this City of Manila, certify, that the preceeding document is a true and exact copy of its original exhibited to me by the

464 party interested and to which I refer

Manila, P. I., May 11, 1910.

(Signed)

FLORENCIO GONZALES DIEZ,
Notary Public.

My commission expires December 31, 1910.

465

8519.

DEFENDANTS' EXHIBIT "1."

Whereas, on the 23rd of February, 1906, Aldecoa & Company, a general mercantile partnership duly registered in the Mercantile Registry of the City of Manila, and the Hongkong & Shanghai Banking Corporation, a corporation duly organized under the laws of Great Britain and registered in the Mercantile Registry of the City of Manila, executed a certain public instrument copy of which is attached to this document marked with letter "A"; and

Whereas, by the terms of said agreement the Hongkong & Shanghai Banking Corporation opened a credit in favor of said firm of Aldecoa & Company up to the sum of four hundred seventy five thousand pesos (P475,000.00) under the terms and conditions mentioned in said instrument; and

Whereas, by the terms of said agreement said firm of Aldecoa & Company was authorized to issue checks against said credit only for the purpose of obtaining funds with which to attend to the purchase of hemp, rice and other products of the Philippine Islands; and

Whereas, Aldecoa & Company from time to time from February 23, 1906, delivered and advanced to Don Salustiano Zubeldia, a merchant of Tabaco, province of Albay, certain sums in cash to be used and invested by said Don Salustiano Zubeldia for the

466 purpose of buying hemp and other products of the Philippine Islands to be consigned to said firm of Aldecoa & Company.

And that said sums in cash and in goods were received by said Don Salustiano Zubeldia for said purpose; that is to say, to buy in the provinces hemp and other products of the Philippine Islands to be consigned to said firm of Aldecoa & Company; and

Whereas, by clauses V and VII of said instrument attached hereto marked "A," said firm of Aldecoa & Company bound itself and promised to deposit in the Hongkong & Shanghai Banking Corporation all the proceeds of the sale of hemp and other products of the Philippine Islands consigned to said firm of Aldecoa & Company by the clients and debtors of said firm, including those consigned to the same by said Don Salustiano Zubeldia; and

Whereas, on the 30th day of November, 1906, said Don Salustiano Zubeldia had received from said firm of Aldecoa & Company for the purposes above stated, the sum of one hundred forty two thousand eight hundred pesos (P142,800) Philippine currency and said Don Salustiano Zubeldia bound itself and promised to consign and deliver to said firm of Aldecoa & Company hemp to the value of one hundred forty two thousand eight hundred pesos (P142,800) Philippine currency; and

Whereas, on said date November 30, 1906, Aldecoa & Company by way of additional security for its debt to the Bank, mortgaged and pledged in favor of said Bank the credit of one hundred forty
467 two thousand eight hundred pesos (P142,800) owed to said concern by Don Salustiano Zubeldia, which credit had to be paid by said Don Salustiano Zubeldia through consignment of hemp to the value of said sum; and

Whereas, Don Salustiano Zubeldia owes at present to Aldecoa & Company the sum of one hundred eighteen thousand six hundred twenty one pesos and twenty three centavos (P118,621.23) Philippine currency more or less, which credit when it is paid is to be turned over to the Hongkong and Shanghai Banking Corporation as agreed upon in clause VIII of the aforementioned instrument, copy of which is attached hereto marked "A"; and

Whereas, said Don Salustiano Zubeldia cannot at this moment pay the said sum; and

Whereas, the said firm of Aldecoa & Company ceased to exist by reason of the expiration of its social term on December 31, 1906, and said concern after said date December 31, 1906, was declared by its partners to be in liquidation, electing William Urquhart to act as liquidator thereof; and

Whereas, no term has been fixed between Aldecoa and Company and Don Salustiano Zubeldia for the payment of said credit; and

Whereas, in the absence of a fixed term, the payment of the credit cannot be demanded in accordance with Article 313 of the Code of Commerce until after thirty days following a demand made by notarial act;

Therefore, said Don Salustiano Zubeldia by this docu-
468 ment solemnly acknowledges and confesses to be indebted to said firm of Aldecoa & Company in the sum of one hundred eighteen thousand six hundred twenty one pesos and twenty three centavos (P118,621.23) Philippine currency more or less, and de-

clares to have read and be acquainted with the agreement entered into by and between the firm of Aldecoa & Company and the Hongkong and Shanghai Banking Corporation as it appears in the public instrument executed on February 23, 1906, copy of which is attached to this instrument marked with the letter "A," and acknowledges that by the terms of said instrument the amount of said credit which he owes to the firm of Aldecoa & Company must be paid to the Hongkong & Shanghai Banking Corporation for the purposes mentioned in said document and said Don Salustiano Zubeldia hereby promises and binds himself to liquidate and settle his *debted* balance as rapidly as possible and to this end he binds himself and promises to pay the Hongkong and Shanghai Banking Corporation in quarterly installments of not less than three thousand pesos (P3,000) Philippine currency, which installments shall begin on the first day of January, 1907, these payments to be applied to the reduction of the credit owed by Aldecoa and Company to said Bank according to the provisions contained in said document of February 23, 1906.

That as a further security in addition to the mortgage which said Don Salustiano Zubeldia executed in favor of the firm of
469 Aldecoa & Company, by an instrument dated on October 11, 1906, and executed before the Notary public of the province of Albay Don Lorenzo E. Villareal, over which mortgage and in so far as the property marked with letters (a), (b), (c) and (d) in said instrument, the firm of Aldecoa & Company by an instrument executed on the 22nd day of December, 1906, and ratified on the same date, before Don Jose Maria Rosado, a Notary public of the City of Manila, executed *on* its turn a mortgage in favor of the Hongkong & Shanghai Banking Corporation, of which mortgage Don Salustiano Zubeldia has been duly notified, this gentleman promises and obligates himself, furthermore, to obtain from his debtors in the provinces the best possible guaranties for the payment of their respective debts, which guaranties once duly given said Don Salustiano Zubeldia promises to transfer and assign to the Hongkong and Shanghai Banking Corporation in order to secure the aforesaid balance which said Don Salustiano Zubeldia owes to Aldecoa & Company.

In witness whereof, we sign this document, this 16th day of January, 1907.

(Signed)

SALUSTIANO ZUBELDIA.

THE HONGKONG & SHANGHAI BANK-
ING CORPORATION,

By its attorney,

(Signed)

A. G. STEPHEN.

Witnesses:

(Sgd.)

JOHN W. HAUSSERMANN.

(Sgd.)

JOSE MORENO LACALLE.

470 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

In the City of Manila, this 16th day of January, 1907, personally appeared before me Don Salustiano Zubeldia and Mr. Alexander Gordon Stephen, whom I certify to know to be the persons who signed the above document and ratified that the same is an act of their own free will and deed. Said gentlemen exhibited their certificates of cedula Nos. A-431,081 and No. A-1,515,678, issued in Albay, January 5, 1907, and Manila, April 7, 1906, respectively.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires December 31, 1908.

Exhibit "A" which is attached to this document is the same Exhibit "A" of the original complaint appearing so many times in this record and is therefore omitted to avoid repetition and the incumbering of the record.

471 DEFENDANTS' EXHIBIT "2."

8519.

The Government of the Philippine Islands,
 Executive Bureau,
 Division of Archives,
 Manila.

There is a seal which reads: Fca. Nl de la moneda y timbre.—Stamp 10. A. 1896 and '97.—25 C. of Peso.—N. O. 757,398.—Folio—one thousand fifteen—1015—Number One Hundred Seventeen—In Manila, on the 18th day of February eighteen hundred and ninety seven. Before me, Don Enrique Barrera y Caldes, doctor in Civil and Canonical Law, Notary Public of the Illustrious College of Manila, and resident of this City, appear:—As parties of the first part: Don Juan Ortiz Monasterio and Irisarri, merchant, of lawful age, married and resident of this capital, with personal cedula of the first class number two hundred seventy, issued in the present year by the Administracion de Hacienda publica of this province;—Don Sixto Jesus Alvarez Perez, merchant, of lawful age, married and resident of this capital, with personal cedula of the fourth class number nine hundred eighty, issued in the present year by the Administracion de Hacienda Publica of this province;—Don Miguel Ossorio y Cembrano, merchant, of lawful age, married and resident of this capital, with personal cedula of the fourth class number seven hundred four, issued in the present year by the Administracion de Hacienda publica of this province; and Don Agustin Palet y Roca, merchant, of lawful age, married and resident of this capital, with personal cedula of the first class number one hundred eighty issued in the present year by the

Administracion de Hacienda publica of this province; making his appearance as attorney in fact and legal representative of Don Guillermo Gargollo y Diez de Tejada, as credited by the first copy of the letters of attorney issued in his favor and in favor of the late Don Modesto Cortabitarte y Aldecoa on the 17th day of August of before the Notary Public of the City of *Ferrol* Don Gumersindo Lopez Pardo, which copy he exhibits to me, and being, literally copied, as follows:—Number six hundred and twenty six.—In the City of Ferrol this seventeenth day of August one thousand eight hundred and ninety six.—Before me, Don Gumersindo Lopez Pardo, Attorney at Law, Member of the Notarial College and resident of said City, personally appears Don Guillermo Gargollo y Diez de Tejada, fifty four years old, merchant, and lately a resident of the City of Manila, with personal cedula of the fifth class, number three hundred ninety five, issued in that City on January twentieth, last; and being, in my judgment legally capable to

execute this power of attorney, states:—That as a member
473 and partner in the mercantile firm of Aldecoa and Company domiciled in the City of Manila according to a public instrument ratified before the Notary Public of that Capital, Don Abraham Garcia y Garcia, on the eleventh day of March last, he grants special power of attorney in favor of Don Modesto Cortabitarte y Aldecoa and, in case of absence or illness of this gentleman, in favor of Don Augustin Palet y Roca, both residents of the City of Manila, for them to represent him at the meetings of the partners of said firm Aldecoa and Company, give their sanction to the resolutions of the same, in accordance with the articles of partnership, and approve, as he does hereby, the entrance of Messrs. Juan Ortiz Monasterio and Miguel Ossorio y Cembrano as partners in the said firm signing to this effect the necessary documents, since he does hereby approve whatever said attorneys may do while making legitimate use of this power of attorney;

This document has been executed before the witnesses Don Pedro Lopez Sardina and Don Juan Chacon Yañez, residents of this City who signed with him after having each one by himself read this document. To whatever appears herein and to the fact that I know the person executing this instrument, I, the Notary, certify.—(Sgd.) Guillermo Gargollo.—(Sgd.) P. Lopez Sardina.—(Sgd.) Juan Chacon.—(Sgd.) Lic. Gumersindo
474 Lopez Pardo.—This is a first copy of the original instrument which, under the number of order given at the beginning of this document remains in my current protocole, written on a sheet of the twelfth class number 1,298,808. And at the instance of the party executing this document I issue this copy which I sign, leaving an entry of this fact, in Ferrol on the same day of the execution hereof.—There is a rubric.—(Sgd.) Lic. Gumersindo Lopez Pardo.—There is a notarial seal which reads: Notaria del Lic. Don Gumersindo Lopez Pardo, Ferrol.—Authentication.—The undersigned, Notary of the Illustrious College of Coruña Notarial district of Ferrol, authenticates the foregoing sign, signature and rubric of the Notary Public of this City Don Gumersindo Lopez Pardo,

in Ferrol, this 21st day of August 1896.—There is a sign.—(Sgd.) Lie. Candido Conde Fernz.—There is a rubric. O. K. The Judge pro tem. of the Court of First Instance and of Instruction. El Ferrol.—There is a cancelled stamp for authentications, of the value of three pesetas.—The foregoing agrees literally with its original, to which I refer.—Messrs. Orqiz Monasterio, Alvarez Perez and Ossorio together with the absent Mr. Gargollo who is herein represented by Mr. Palet, appear as managers of the firm Aldecoa and Company of this City, as partners thereof with power to sign in the firm name, according to clauses 6th and 7th of the articles of partnership of the general mercantile partnership executed before this Notary public on December 31, last, the first copy of which has been recorded at shee- number one hundred and fifty six folio ninety two Volume fifth of the Book of Partnerships of the Mercantile registry of this City, as it appears from the first copy of said articles of partnerships wherein said clauses 6th and 7th are contained and which literally copied are as follows:—Sixth.—The use of the firm name is given severally to Messrs. Juan Ortiz Monasterio, Sixto Jesus Alvarez Perez, Miguel Ossorio y Cembrano and Guillermo Gargollo y Diez de Tejada.—Seventh.—The members having the use of the firm name are hereby appointed managers of the firm; but Mr. Ortiz Monasterio, by reason of the long time he has belonged to the firm, and on account of having already held this office, shall designate the branch of the business which each one of the others is to take charge of as manager, without prejudice, in case of illness or absence, of one substituting another. If, in the absence of Mr. Ortiz Monasterio, it should be necessary to change any of the appointments made by him, said change shall be agreed upon by the majority, reporting this fact to Mr. Ortiz and asking his advice, and should it disagree with what has been resolved a new resolution can be taken.—In case that the appearance of one of the partners be necessary before any Court, Board, Authority, etc., and this duty is not included or foreseen in those already designated, the majority shall appoint the person who is to fulfill it.—By this procedure, the person designated as manager shall act at all times and in all cases as such manager, without limitation, as to time, and always complying with the resolutions of the majority according to each particular business; and the person designated as manager, clothed with all the authority and representation of the partnership, shall have power, on behalf of said partnership, to make all kinds of purchases, charges, sales, contracts, loans, transactions, business and mercantile speculations which may fall within or be related to the purposes of this firm; to compromise any differences or questions which the partnership may have with third persons or entities; to represent the partnership judicially or extrajudicially; to transact all the business wherein the partnership may be interested; to appoint all kinds of general or special agents and solicitors for the claim or collection of credits, and to file before the Courts the complaints and exceptions which may be deemed convenient.—The partner which, as such, or as

manager, should not comply with the resolutions of the majority
may be separated from the partnership should a majority
477 of the meeting of the partners so decide.—The foregoing
agrees literally with its original, to which I refer.—And as
party of the second part, the Most Excellent Lady Doña Isabel
Palet y Gabarro, widow of the Most Excellent Don Zoilo Ibañez
de Aldecoa y Aguirre, of lawful age, landholder, and resident of
this Capital, with personal cedula of the first class, number one
hundred sixty nine, issued by the Administracion de Hacienda
publica of this province on the twentieth of January of the present
year; making her appearance in her own right and also as mother
with parental authority and as legal administratrix of the prop-
erty of her minor and not emancipated children, Don Joaquin,
Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet, born of
lawful wedlock with her husband the said Most Excellent Don
Zoilo Ibañez de Aldecoa y Aguirre, who was a resident of this
City, where he died on the fourth day of October of the year one
thousand eight hundred and ninety five.—And having in my judg-
ment the necessary legal capacity to execute this instrument noth-
ing to the contrary appearing, the parties above named, in the
aforesaid capacity freely and expontaneously state:—That on the
sixth of the present month and year the Most Excellent lady Doña
Isabel Palet y Gabarro widow of Ibañez de Aldecoa, by herself
and as mother with parental authority and legal adminis-
478 tratrix of the property of her minor and not emancipated
children Don Joaquin, Don Zoilo and Doña Cecilia Ibañez
de Aldecoa y Palet, by virtue of the provisions contained in clause
10th of the contract of partnership which govern the firm of Al-
decoa and Company of which said lady and her aforementioned chil-
dren are also partners, addressed a letter to the representatives of
said partnership proposing the deposit therein of a certain sum of
money belonging in part to said lady and in part to her children
on condition that she might at any time dispose of one half of the
amount deposited, and gradually paying the other half by yearly
instalments; and the partners of said firm taking into account the
right invoked by said lady according to the text of the articles
of partnership, it was agreed at the meeting held on the four-
teenth instant to accept the proposition made, and execute to that
effect the correspondent instrument.—That for the purpose of car-
rying into effect said resolution, the parties hereto in the capacity
above stated by this instrument most solemnly state:—First. That
Messrs. Aldecoa and Company and on its behalf the parties of this
instrument declare to have received of the Most Excellent lady
Doña Isabel Palet y Gabarro the sum of four hundred eighty
thousand sixteen pesos and eighty centavos, of which sum
479 eighty one thousand six hundred and sixty pesos with thirty
four cents and -our eighths belonged to said lady, one hun-
dred fifty four thousand five hundred eighty nine pesos and twenty
cents to her son Don Joaquin Ibañez de Aldecoa y Palet, one hun-
dred fifty four thousand five hundred eighty nine and twenty cents
to her other son Don Zoilo Ibañez de Aldecoa y Palet, and eighty

nine thousand one hundred seventy seven pesos and five cents and four eighths to her daughter Doña Cecilia Ibañez de Aldecoa y Palet all of them minors not emancipated and subject to her parental authority; which total sum of four hundred eighty thousand sixteen pesos and eighty centavos they declare to have received from said lady in cash to their own satisfaction and for which they execute in her favor the most firm and valid receipt which may be necessary to secure her rights.—Second. That of said sum of four hundred eighty thousand sixteen pesos and eighty centavos, two hundred forty thousand eight pesos and forty cents, that is to say, one half of the total sum is deposited in account current in said firm of Aldecoa and Company at the interest of five per cent per annum; said Doña Isabel Palet y Gabarro being therefore able to freely dispose of said sum of two hundred forty thousand eight pesos and forty centavos at any time without limitation or restriction of any kind.—Third. That the other remaining half,

480 that is to say, two hundred forty thousand eight pesos and

forty centavos are deposited as a mutual loan in said firm of Aldecoa and Company at the interest of five per cent per annum, which sum shall be gradually paid by Messrs. Aldecoa and Company through annual instalments at the rate of forty thousand pesos each, payable within the month of January of each year, the first instalment to begin in the year eighteen hundred and ninety eight and so on until said credit has been completely paid, which in this way shall have to be totally paid up within the period of six years.—Fourth. Notwithstanding the provisions of the foregoing clause Messrs. Aldecoa and Company reserve to themselves the right not to wait for the expiration of the terms fixed in order to pay up the total amount of the credit owed should this be convenient to their interest without any right on the part of Doña Isabel Palet y Gabarro to oblige Messrs. Aldecoa and Company to continue with the deposit of said capital in the form above indicated.—Fifth. Messrs. Aldecoa and Company are obliged as aforesaid to pay the interest of five per cent per annum, only, on the amounts deposited both in current account and as a loan, no interest to be paid on the amounts withdrawn by Doña Isabel Palet y Gabarro and those which Messrs. Aldecoa and Company

481 should have paid her at the agreed terms in so far as the amount deposited as a loan, the cessation of interest to begin from the time of the withdrawal and of the payment.—Sixth. Messrs. Aldecoa and Company and on its behalf the parties hereto, in accordance with the stipulation contained in said clause 10th of the contract of partnership consider the credit acknowledged by this document as having the preference of the credits of this nature.—Seventh. The Most Excellent lady Doña Isabel Palet y Gabarro by herself and on behalf of her minor children above named accepts this instrument in the precise terms in which it has been executed.—and Eighth. The parties hereto bind themselves in the most solemn manner in law to comply with all the provisions of this document designating by common agreement this City for all judicial and extrajudicial acts which this contract may

originate.—So they state in the presence of the instrumental witnesses Don Tomas Aguilon and Don Zacarias San Pedro both of age and residents of this City; and this document having been read by all presents in use of the rights to them given by law, the parties hereto ratify themselves and they all sign, approving the amended: Y: S: r; to all of which and to the fact that I know the parties, their profession and residence, I certify. Isabel Palet viuda de Aldecoa.—Rubricated.—Aldecoa and Company.—Rubricated.—Aldecoa and Company.—Rubricated.—Aldecoa and Company. p. p. Guillermo Gargollo.—A. Palet.—Rubricated.—Tomas Aguilon.—Rubricated.—Zacarias San Pedro.—Rubricated. (Sgd.) Dr. Enrique Barrera y Caldes.—Rubricated.—Note: On this same date February 18th, eighteen hundred ninety seven, I have issued a first copy of this document at the request of Messrs. Aldecoa and Company in a sheet of paper with seal of the first class for ditto of the twelfth for the present term of two years, to which I certify.—Barrera.—Rubricated.—On the margin.—Acknowledgment of debt for the sum of four hundred eighty thousand sixteen pesos and eighty centavos executed by Messrs. Aldecoa and Company in favor of the Most Excellent lady Doña Isabel Palet y Gabarro for herself and as mother of her minor children Don Joaquin, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet.

I certify that the foregoing is a copy made literally of its original which is kept in this office.

In witness whereof, I sign and seal these presents in Manila this twenty sixth of January, nineteen hundred and twelve.

[Seal Second Assistant Secretary, exOfficio Notary Public.]

(Sgd.)

M. IRIARTE,

Second Assistant Executive Secretary.

(P0.20 Internal Revenue Stamp.)

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DEFENDANTS' EXHIBIT 3.

6086.

Bill of Exceptions.

In the Case of

No. 7493.

Sup. Ct. R. G. No. 6749.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET et al.

vs.

THE HONGKONG AND SHANGHAI BANKING CORPORATION et al.

Be it known that in the Court of First Instance of Manila, Part III, the following proceedings were had in dates mentioned below:

1.

On November 30th, 1909, plaintiffs filed the following complaint:

(Heading and Title of the Case Omitted.)

Now come Chicote and Miranda, Attorneys at Law, and counsel for the plaintiffs, and as cause of action against the defendants allege:

I.

That in Civil case No. 6087, of the Court of First Instance of Manila, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa
484 and Cecilia Ibañez de Aldecoa, the latter being assisted by her husband J. M. Ibañez de Aldecoa vs. Aldecoa and Company, in liquidation, and Doña Isabel Palet y Gabarro, the Court, on September 30, 1908, rendered the decision which is attached hereto, marked Exhibit A, and made part hereof.

II.

That when said judgment became final, the Court issued a Writ of Execution thereon, by virtue of which all the property which according to the best information and belief of these plaintiffs was in possession of Aldecoa and Company, was levied and executed.

III.

That out of the proceeds of said execution, these plaintiffs have recovered the sum P17,022.28, only, there being still a balance of P149,492.77, in their favor, which these plaintiffs have not recovered yet, plus the interest thereon at the rate of 6% per annum, from the 10th day of August, 1909, which was the date of the last execution.

IV.

That defendant concern, the Hongkong and Shanghai Banking Corporation, is a foreign Corporation duly registered and licensed to engage in banking business in the Philippine Islands; and Mr. William Urquhart is the liquidator of the firm of Aldecoa and Company in liquidation.

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V.

That on December 31, 1906, and for a long time prior to said date, the said firm of Aldecoa and Company was a general mercantile partnership duly organized and registered in the Mercantile Registry of the City of Manila, in accordance with the laws in force in the Philippine Islands, until the said date, December 31, 1906, when the social term thereof expired and thereupon entered into a period of liquidation.

VI.

Plaintiffs herein know that the Hongkong and Shanghai Banking Corporation is possessed of certain certificates of stock of the "Pasay Estate Co. Ltd.," Nos. 65 to 97, which Aldecoa and Company in liquidation acquired from their former owner Mr. Alexander S. Macleod, in payment of certain indebtedness of said Mr. Macleod in favor of said Aldecoa and Company, as it so appears from the instrument executed on the 14th day of August, 1907, by both parties, a copy of which is attached hereto marked Exhibit B, and made part hereof.

VII.

The said Bank obtained possession of said certificates of stock under and by virtue of a certain instrument executed by and between said banking corporation and Mr. William Urquhart, the liquidator of Aldecoa and Company, on August 30th, 1907, copy of which is attached hereto, marked Exhibit C, and made part hereof.

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VIII.

That, based on the foregoing statements, plaintiffs in this case asked the Court in the supplementary proceedings for the execution of the judgment in above said case No. 6087 to order the Hongkong and Shanghai Banking Corporation to deposit said certificates of stock in Court, and to have the same sold at public auction and apply the proceeds thereof to the satisfaction of the judgment.

IX.

The Hongkong and Shanghai Banking Corporation opposed said petition on the ground that by virtue of the contract attached hereto, marked Exhibit B, said certificates of stock had been delivered to said bank by the liquidator of Aldecoa and Company, as a further security, in addition to that executed before, in favor of said bank for the payment of a certain indebtedness of Aldecoa and Company to said bank.

X.

The Court denied the petition of these plaintiffs, but gave them permission, however, to file the proper action against the said Bank, in order to recover said certificates of stock.

XI.

The agreement referred to in paragraph VII of this complaint, was an agreement executed by Mr. William Urquhart, apparently, by virtue of the act passed in his favor by the partners of Aldecoa and Company, which is attached hereto marked Exhibit "D," and made part hereof.

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XII.

Mr. William Urquhart has executed that agreement without express authority from the partners or conferred by law, without powers or authority as such liquidator to enter into such contract, making the Hongkong and Shanghai Banking Corporation an exceptionally privileged creditor to the damage of and defrauding the other creditor of Aldecoa and Company in liquidation amongst which are these plaintiffs.

Wherefore, these plaintiffs ask this Honorable Court to render judgment in favor of these plaintiffs and against the defendants decreeing that the said agreement attached hereto and made part hereof, marked Exhibit C, is null and void and of no legal effect; ordering the Hongkong and Shanghai Banking Corporation to deliver said certificates so as to proceed to the sale thereof at public auction and apply the proceeds thereof to the satisfaction of the balance which the firm of Aldecoa and Company in liquidation owes

these plaintiffs according to the judgment of this Court; to
488 pay the costs and granting furthermore these plaintiffs any other remedy which this Court may deem just and equitable.

Manila, November 30, 1908.

CHICOTE AND MIRANDA,
Attorneys for Plaintiffs.

EXHIBIT "A."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila, Part III.

Civil Case No. 6087.

DON JOAQUIN IBAÑEZ DE ALDECOA, DON ZOILO IBAÑEZ DE ALDECOA,
and Doña Cecilia Ibañez de Aldecoa, Assisted by Her Husband,
Don J. M. Ibañez de Aldecoa, Plaintiffs,

vs.

ALDECOA AND COMPANY, in Liquidation, and DOÑA ISABEL PALET Y
GABARRO, Defendants.

Decision.

The complaint having been filed in this case, and defendants Aldecoa and Company in liquidation, and Doña Isabel Palet y Gabarro having each separately filed their respective answers thereto all the parties in this case have submitted this matter to the decision
489 of this Court without need of further evidence or argument, under the following agreement upon the facts which said parties admit to be true:

(a.) That Doña Isabel Palet y Gabarro widow of Don Zoilo Ibañez de Aldecoa was and is the legitimate mother of plaintiffs.

(b.) That Doña Isabel Palet y Gabarro general partner in the firm of Aldecoa and Company, on or about the month of February of the year 1897, deposited with said firm as the mother of these plaintiffs a sum of money amounting to not less than two hundred and four thousand one hundred eighty four pesos and seventy centavos (P204,184.70) Philippine currency belonging to these plaintiffs in the following proportion:

To Don Joaquin I. de Aldecoa.....	P78,963.61
To Don Zoilo I. de Aldecoa.....	P78,963.61
To Doña Cecilia I. de Aldecoa.....	P46,257.53 6/8

(c.) That said deposit was made at the interest of five per cent (5%) per annum which was later raised to six per cent (6%) per annum without having executed any public instrument, but it having been agreed that Doña Isabel Palet could at any time on behalf of her children dispose freely of said deposit and that said deposit would be considered as having been acknowledged by public instrument and to be a preferred credit.

490 (d.) That Aldecoa and Company bound itself not to execute any instrument acknowledging any debt nor to contract any obligation which would have preference to the one above referred to without having first obtained the personal consent of Doña Isabel Palet. (Exhibit "A" attached to this stipulation.)

(e.) That on December 31, 1906, the firm of Aldecoa and Company was indebted to plaintiffs herein, by reason of the deposit or obligation above referred to, together with the interest agreed upon and earned up to said date, to the amount of one hundred forty three thousand three hundred sixty nine pesos thirty seven centavos (P143,369.37) which belonged to these plaintiffs in the following proportion:

To Don Joaquin I. de Aldecoa.....	P64,295.14
To Don Zoilo I. de Aldecoa.....	P56,247.53
To Doña Cecilia I. de Aldecoa.....	P22,826.70

(f.) That said sum together with the interest earned by the same at the rate of six per cent (6%) per annum until the 15th day of May 1908 amounts at present to one hundred fifty five thousand one hundred ninety seven pesos thirty one centavos (P155,197.31), all of which amount is due and payable to these plaintiffs in the respective proportion.

491 (g.) That plaintiffs have repeatedly demanded payment from Aldecoa and Company for the amount of said obligation.

(h.) That Doña Isabel Palet on making the above said deposit acted upon the advice of the managers of Aldecoa and Company and has not derived any benefit nor would she have accepted it by reason of the deposits above referred to.

In view of the above facts, which have been admitted as proved by

virtue of the agreement of all the parties interested in this case, the defendant Doña Isabel Palet y Gabarro cannot be made personally, jointly and severally liable with the firm of Aldecoa and Company for the payment of the amount due to the plaintiffs, the original amount was deposited by said plaintiffs and it being the firm, and not she personally, the one who was benefited by reason of said deposit; but, inasmuch as she was at the same time a general partner of the partnership, that obligation must be paid not only out of the funds of Aldecoa and Company in liquidation but also out of the funds which said Doña Isabel Palet may have in said firm as general partner thereof and also out of her own property if that of the company should not be sufficient to cover the whole amount due.

492 By virtue whereof the Court sentences the firm of Aldecoa and Company in liquidation to pay to plaintiffs Joaquin I. de Aldecoa, Zoilo I. De Aldecoa and Cecilia I. de Aldecoa the sum of one hundred fifty five thousand one hundred twenty seven pesos and thirty one centavos (P155,127.31) Philippine Currency in the proportion belonging to each one of them, in accordance with the deposit of two hundred four thousand one hundred eighty four pesos seventy four centavos (P204,184.74) made by Doña Isabel Palet Gabarro in said firm in the month of February, 1897, plus the interest of six per cent (6%) per annum from May 16th, 1908, until full payment thereof, and to pay the costs. The complaint is dismissed in so far as the defendant Isabel Palet y Gabarro, is concerned.

So Ordered.

Manila, P. I., September 14, 1908.

(Sgd.)

MANUEL ARAULLO, *Judge*.

EXHIBIT "B."

Know all by these presents that we: William S. Macleod, merchant, of lawful age married and resident of this city in the name and on behalf of the Spouses Alexander S. Macleod and Mercedes Martínez y Fernández by virtue of the power of attorney to me granted by an instrument No. 378 executed in the city of Manila, on the 12th day of May 1896, before the Notary Public Don Enrique Barrera y Caldés, which power of attorney has not been suspended revoked or limited, the party of the first part; William Urquhart, merchant, of lawful age single, and resident of this city, as liquidator of the firm of Aldecoa and Company of this City, now in
493 liquidation, by reason of the expiration of its social term, by virtue of the appointment made in my favor and which appears registered at page 107 entry No. 12, Volume 16, of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part; A. G. Stephen, merchant, of lawful age, married, and resident of this city, in the name and on behalf of the Hongkong and Shanghai Banking Corporation, of which I am manager and director in the city of Manila, Philippine Islands, the party of the third part;

Hereby state: Whereas, Aldecoa and Company in liquidation

brought suit in the court of First Instance of Manila, against Alexander S. Macleod and William Macleod, wherein judgment is prayed for against said Alexander S. Macleod sentencing him to deliver to plaintiff the shares of the Pasay Estate Company, Limited, to be hereinafter described and to pay one hundred and fifty thousand pesos, (P150,000.00) Philippine currency, as damages said case having been registered under No. 5560 of the Registry of Civil cases of said court.

Whereas, the same firm of Aldecoa and Company, in liquidation has other claims pending against Alexander S. Macleod amounting to one hundred ninety-one thousand pesos (P191,000.00), Philippine currency.

Whereas, on the other hand, the Hongkong and Shanghai Banking Corporation is a party in a case now pending under No. 5121 of the court of first instance of Manila, against said Alexander S. Macleod, in which case an injunction has been issued by the said court.

Whereas, William S. Macleod as attorney in fact of Alexander S. Macleod and Mercedes Martínez y Fernández is ready to convey and transfer in payment to Aldecoa and Company some 494 of the property belonging to the persons whom he represents on condition that both Aldecoa and Company in liquidation and the Hongkong and Shanghai Banking Corporation shall waive their claims and the latter shall cause the injunction which prevents the parties whom he represents to dispose of certain promissory notes which are to be transferred by virtue of this instrument, be raised.

Therefore, the parties hereto, on behalf of the persons whom they represent, stipulate, agree and covenant as follows:

First. I, William S. Macleod, as attorney in fact of Alexander S. Macleod, give, transfer and assign to Aldecoa and Company in liquidation and in payment of the sum of one hundred sixty-one thousand pesos (P161,000.00), Philippine currency, the shares of the Pasay Estate Company, Limited, numbered and described in detail as follows:

Certificate	No. 65, ten	shares	Nos. 633 to 642.
"	" 67, ten	"	" 653 " 662.
"	" 97, two	"	" 953 " 954.
"	" 66, ten	"	" 643 " 652.
"	" 68, ten	"	" 663 " 672.
"	" 69, ten	"	" 673 " 682.
"	" 70, ten	"	" 683 " 692.
"	" 71, ten	"	" 693 " 702.
"	" 72, ten	"	" 703 " 712.
"	" 73, ten	"	" 713 " 722.
"	" 74, ten	"	" 723 " 732.
"	" 75, ten	"	" 733 " 742.
"	" 76, ten	"	" 743 " 752.
"	" 77, ten	"	" 753 " 762.
"	" 78, ten	"	" 763 " 772.
"	" 79, ten	"	" 773 " 782.

Certificate No. 80,	ten shares	Nos. 783 to 792.
" " 81,	ten	" " 793 " 802.
" " 82,	ten	" " 803 " 812.
" " 83,	ten	" " 813 " 822.
" " 84,	ten	" " 823 " 832.
" " 85,	ten	" " 833 " 842.
" " 86,	ten	" " 843 " 852.
" " 87,	ten	" " 853 " 862.
" " 88,	ten	" " 863 " 872.
" " 89,	ten	" " 873 " 882.
" " 90,	ten	" " 883 " 892.

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Certificate No. 91	ten shares	Nos. 893 to 902.
" " 92,	ten	" " 903 " 912.
" " 93,	ten	" " 913 " 922.
" " 94,	ten	" " 923 " 932.
" " 95,	ten	" " 933 " 942.
" " 96,	ten	" " 943 " 952.

Second. In the transfer of the shares above described the corresponding dividends are included, which, although due prior to this date, have not yet been collected by the assignors transfer-ors or vendors with exception of two thousand pesos (P2,000.00), Philippine currency, which shall be delivered by Aldecoa and Company, after the same have been collected by said firm, to the attorney, in fact of Mr. Alexander S. Macleod.

Third. William S. Macleod, as attorney in fact of Doña Mercedes Martínez y Fernández, in consideration of the sum of fifteen thousand pesos (P15,000.00), on account of the claims which Aldecoa and Company in liquidation has against Alexander S. Macleod the husband of said lady, adjudicates in payment, conveys sells and assigns to said Aldecoa and Company in liquidation one-half undivided interest in a certain piece of real estate title to which has been asked for and is pending in case No. 2972 of the court of Land Registration, the description of said property being as follows:

"Solar con frente a la calle Real de Malate, señalado con los Nos. 335 al 359 y por el lado opuseto con frente también a la bahía de Manila, Partiendo de la esquina A (vease el plano) queforman el costado más al Norceste de dicha calle Real y el chaflán del costado más al Sudeste de la calle Sinagoga, tómesese el rumbo S. $37^{\circ} 04' 53''$ O. y la distancia de $12' 795$ metros y se tendrá el vértice B. del solar en el costado de dicha calle, No. $26^{\circ} 38' 31''$ O. y la distancia de $79' 74$ metros y se tendrá el vértice. C. Desde este rumbo S. $61^{\circ} 51' 54''$ y la distancia de $31' 339$ metros y se tendrá el vértice D. Desde este rumbo S. $22^{\circ} 28' 04''$ E. y la distancia de $4' 375$ metros y se tendrá el vértice E. Desde este rumbo S. $65^{\circ} 12' 26''$ O. y la distancia de $49' 017$ metros y se tendrá el vértice F. en la playa de la bahía de Desde F. rumbo Sur $27^{\circ} 45' 40''$ E. y la distancia de $82' 309$ metros y se tendrá el vértice G, también en la citada playa. Desde G rumbo N. $65^{\circ} 34' 32''$ E. y la distancia de

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32'868 metros y se tendrá el vértice F. Desde este rumbo N. 26° 55' 54" O y la distancia de 6'68 metros y se tendrá el vértice I. Desde este rumbo N. 62° 11' 22" E. y la distancia de 42'73 metros y se tendrá el primer vértice B considerado.—Todos los vértices están señalados en el terreno por sus esquinas de muros, exceptos los F y G. que lo están por piquetes de madera, area. Este solar limitado por ocho líneas rectas, tiene un área de 6412'74 metros cuadrados.—Colindantes: Al Nordeste Próximamente, la calle Real de Malate, al Sudeste propia de Don Isidoro Medina y Da. Francisca Rueda; al Sudeste, la bahía de Manila, y al Noroeste, propiedades de Don Arturo Vidal.—Orientación: La seguida fué la magnética y la medición efectuada el 9 de Noviembre de 1906."

Fourth. William S. Macleod as attorney in fact of Doña Mercedes Martínez y Fernández and of Alexander S. Macleod conveys transfers and assigns to the firm of Aldecoa and Company in liquidation and in payment of the sum of forty-five thousand pesos (P45,000.00), Philippine currency a certain credit which appears in favor of Doña Mercedes Martínez y Fernández by virtue of certain documents which literally copied are as follows:

"This agreement entered into by and between Macleod and Company a mercantile firm of this city and "Widow and Sons of F. Escaño" also a mercantile firm established in Malitbog province of Leyte Philippine Islands witnesseth: 1. That said firm of Macleod and Company of Manila has sold to the Widow and sons of F. Escaño of Malitbog three promissory notes signed by the firm of Aldecoa and Company in favor of Doña Mercedes Macleod for the sum of fifteen thousand pesos (P15,000.00) each, which are due on December 31, of the present year;—2. That the firm Widow and sons of F. Escaño has advised the debtor Aldecoa and Company of this transfer so that the amount of said notes be credited to its account current when said promissory notes become due.—3. That firm of

497 Widow and sons of F. Escaño has bound and by these presents does bind itself to pay to Macleod and Company the full value of said promissory notes amounting to forty-five thousand pesos (P45,000.00) with interest thereon, at the rate of seven per cent (7%) per annum in four half-yearly instalments as follows: Twelve thousand pesos (P12,000.00) on the 31st of December, 1907.—Twelve thousand pesos (P12,000.00) on the 31st of December, 1908.—Eleven thousand pesos (P11,000.00) on the 31st of December, 1909.—Ten thousand pesos (P10,000.00) on the 31st day of December, 1910, the interest beginning to run from the 31st day of December of this year, on which date said promissory notes become due.—4. Should the widow and sons of F. Escaño, find it convenient, they may return or pay both principal and interest up to the date of payment *geore* the dates stated in the preceding paragraph for the payment to Messrs. Macleod and Company of said sum of forty-five thousand pesos (P45,000.00)—In witness whereof, we sign these presents with our hands and in triplicate in Manila, this 17th day of December, 1906.—(Sgd.) Widow and Sons of F. Escaño, by Agustina F. Vda. de Escaño.—(Sgd.) Macleod and Company, by Carl Detzer, Member of firm.—Signed in the presence of: (Sgd.)

J. W. Cairns.—(Sgd.) F. J. Compton.—United States of America.—Philippine Islands.—City of Manila.—In the city of Manila, this 17 day of February, 1906 A. D. before me personally appeared Doña Agustina Faellar, widow of Escaño, manager of the firm Widow and sons of F. Escaño of Malibog, Leyte, and Mr. Carl Detzer, manager of the mercantile firm Macleod and Company of this city, whom I certify to be the same persons who executed the foregoing document and ratified the same to be an act of their own free will and

498 deed. Mr. Detzer exhibited his certificate of registration No. 133,809, issued by the Collector of Internal Revenue, of this city on the 7 day of February of the present year; the widow of F. Escaño not having exhibited any document by reason of being exempt from it on account of her sex. In witness whereof, I sign these presents and place my hand and official seal on the date above mentioned.—(Sgd.) Florencio González Díez, Notary Public. My commission expires December 31, 1906, (Notarial seal)—(20 centavos Internal revenue stamp)—Surrendered to Doña Mercedes M. Macleod so far as we are concerned.—Dec. 28/06—(Sgd.) Macleod and Company, by Carl Detzer."

"Manila, Dec. 17, 1906.—A. S. Macleod, Esq.—Manila, P. I.—Dear Sir:—We have arranged with Mrs. F. Escaño and Sons that in settlement of the three promissory notes for P15,000.00 each which you have endorsed to us, they shall make payment to us upon the following terms:

P12,000	payable	31st	December,	1907;
" 12,000	"	31st	"	1908;
" 11,000	"	31st	"	1909;
" 10,000	"	31st	"	1910.

Plus interest at the rate of seven per cent per annum (7%), said interest to be payable every six months. Our commission on this business shall be two and one half — (2½%) on the net collections.—It is understood that there shall be no responsibility attached to us in this matter other than the receiving and the prompt transmission to you of the moneys collected under this arrangement. We are, Dear Sir, Yours faithfully (Sgd.) Macleod and Company.

5. That in the foregoing adjudication, sale cession and transfer the interest of the foregoing credits is also included, and by 499 virtue of this document it also becomes the sole and exclusive property, like all else above stated, of the firm Aldecoa and Company, in liquidation.

6. I William S. Macleod as attorney in fact of Alexander S. Macleod cede, transfer, convey and assign to the firm of Aldecoa and Company in liquidation, the credit which my principal has in that concern, which credit is hereby cancelled just as if said firm of Aldecoa and Company in liquidation should owe nothing to Don Alexander S. Macleod, who, by virtue of another instrument, withdraws from the firm of Aldecoa and Company in liquidation.

7. Aldecoa and company in liquidation, by virtue of the foregoing

adjudication, considers itself fully paid for all claims against Don Alexander S. Macleod and Don Miguel Ossorio; said Messrs. Aldecoa and Company in liquidation reserving to themselves whatever rights they may have to claim what is due to them or they may believe is due to them by Don Guillermo Gargollo and the heirs of Sixto Jesús Alvarez Perez.

8. The Hongkong and Shanghai Banking Corporation having knowledge of the present document states. That it has no objection to the execution thereof.

9. All contracting parties herein state: That the civil cases pending before the court of First Instance of the city of Manila and designated by numbers 5563 and 5121 are fully settled and terminated by virtue hereof and that the dismissal of said cases shall be asked for in due time.

In witness whereof, we sign this document fivefold in Manila this 14th day of August, 1907.

p. p. A. S. MACLEOD AND
DA. MERCEDES MARTÍNEZ,
W. S. MACLEOD.

(Sgd.)

For Aldecoa and Co. in liquidation,

(Sgd.)

WM. URQUHART.

For the Hongkong and Shanghai Banking Corporation,

(Sgd.)

A. G. STEPHENS, *Manager*.

500 Signed in the presence of:

(Sgd.) CHARLES C. COHN.

(Sgd.) FRANCISCO ORTIGAS.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila, this 14 day of August, 1907, before me personally appeared Mr. William S. Macleod, Mr. William Urquhart and Mr. A. G. Stephens, whom I know, to be the persons who executed the foregoing document and to which they ratified themselves stating the same to — an act of their own free will and deed. The appearing parties exhibited their certificates of cedula Nos. A 1,488,603 A 1,461,203 and A 179,705 issued in *Naila*, by the collector of Internal Revenue of this city on the 8 day of February, 22 of January, and 18 of January, 1907, respectively.

In witness whereof, I sign my name and place my official seal at the foot of this certificate on the *date*, month and year above mentioned.

[NOTARIAL SEAL.] (Sgd.)

ANTONIO SANZ,

Notary Public.

My commission expires December 31, 1908.

I, Don Antonio Sanz, attorney at law and Notary Public for the city of Manila, and domiciled in the same hereby certify that the foregoing is a copy of a certain document appearing in my notarial registry which document is also a copy of the original hereof. In

witness whereof, and at the request of Mr. William Urquhart merchant, of lawful age, single and resident of this city with certificate of cedula No. A 1,488,603 issued in Manila on the 8th of February, 1907, as liquidator of the mercantile firm Aldecoa and Company in liquidation, I issue the present certificate which I seal with my notarial seal and sign and rubricate in Manila on the 6 day of September, 1907.

(Sgd.)

ANTONIO SANZ,
Notary Public.

My commission expires December 31, 1908.

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EXHIBIT "C."

Know All by These Presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of this City, as liquidator of the firm of Aldecoa & Company, of this City, now in liquidation, on account of the expiration of the term of said partnership, by virtue of an appointment made in my favor and which is registered in the Mercantile Registry of this City at folio 107 Registry 12 of Volume XVI of the Book of Partnerships; and Mr. A. G. Stephen, merchant, of lawful age, married and resident of this City, on behalf of the Hongkong and Shanghai Banking Corporation of which I am Manager and Director in Manila, Philippine Islands, hereby make know:-

Whereas by an instrument ratified and signed in this City before the Notary Public of the same Don Jose Ma. Rosado on February 23, 1906, the Hongkong and Shanghai Banking Corporation and Aldecoa and Company entered into an agreement by which the former binds itself to keep open in favor of the latter a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000.00) Philippine currency subject to the conditions and securities which are prescribed more in detail in the document referred to.

502 Whereas, at a later date the contracting parties herein also agreed that if certain shares of the Pasay Estate Company were declared to be the property of Aldecoa and Company in liquidation, said shares would be given by the debtor Company to the creditor Company as a further guarantee.

Whereas, the said shares of the Pasay Estate Company Limited have become the property of said Aldecoa and Company in liquidation.

Therefore the contracting parties herein stipulate and agree as follows:

(a) Aldecoa and Company in liquidation, represented by its liquidator William Urquhart, as mortgagor, by these presents transfer and mortgages to the Hongkong and Shanghai Banking Corporation the mortgages, the shares of the Pasay Estate Company Limited which are hereby delivered to said mortgagee for the custody and preservation thereof, said shares of the Pasay Estate Company Limited being described in detail as follows:

Certificate	No.	65, ten shares	Nos.	633 to 642.
"	"	66 "	"	643 " 652.
"	"	67 "	"	653 " 662.
"	"	68 "	"	663 " 672.
"	"	69 "	"	673 " 682.

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Certificate	No.	70, ten shares	Nos.	683 " 692.
"	"	71 "	"	693 " 702.
"	"	72 "	"	703 " 712.
"	"	73 "	"	713 " 722.
"	"	74 "	"	723 " 732.
"	"	75 "	"	733 " 742.
"	"	76 "	"	743 " 752.
"	"	77 "	"	753 " 762.
"	"	78 "	"	763 " 772.
"	"	79 "	"	773 " 782.
"	"	80 "	"	783 " 792.
"	"	81 "	"	793 " 802.
"	"	82 "	"	803 " 812.
"	"	83 "	"	813 " 822.
"	"	84 "	"	823 " 832.
"	"	85 "	"	833 " 842.
"	"	86 "	"	843 " 852.
"	"	87 "	"	853 " 862.
"	"	88 "	"	863 " 872.
"	"	89 "	"	873 " 882.
"	"	90 "	"	883 " 892.
"	"	91 "	"	893 " 902.
"	"	92 "	"	903 " 912.
"	"	93 "	"	913 " 922.
"	"	94 "	"	923 " 932.
"	"	95 "	"	933 " 942.
"	"	96 "	"	943 " 952.
"	"	97 two	"	953 " 954.

504 (b) This mortgage is executed as additional for the payment for the said Hongkong and Shanghai Banking Corporation, the mortgagee, of the amount for which Aldecoa and Company, the mortgagor, may be indebted to it by reason of the credit in current account which is mentioned in the first paragraph of this document and of whatever other amounts which said mortgagor may owe to the said mortgagee in the future.

(c) The mortgagee is hereby authorized to collect and receive from the Pasay Estate Company Limited all dividends, bonuses, or any other distribution of capital and profits which said Company may distribute on account of the said shares hereby mortgaged, issuing the corresponding receipts and acknowledgments of payment for the amounts so received and applying the amounts so collected by the mortgagee to the partial payment (that is to say, as far as they may reach) of the account of the mortgagor Aldecoa

and Company in liquidation, until the final liquidation of said debt, and if there should be any excess, this excess shall then be paid to said Aldecoa and Company in liquidation.

(d) The conditions of this obligation are: if the mortgagor, its heirs or successors, executors, or administrators, should pay
505 to the mortgagee the whole amount owed or which may be owed by them, this obligation shall be null and void.

(e) Aldecoa and Company in liquidation reserves to itself the right to sell the shares of the Pasay Estate Company Limited above mentioned, provided that on making the sale, the purchaser shall deposit into the Bank the whole amount of purchase price; *being it* understood that the price so paid by the purchaser shall be applied to the reduction of the debt of Aldecoa and Company, said shares being released in that case from all incumbrance.

(f) The Hongkong and Shanghai Banking Corporation acknowledges to have received the shares hereby mortgaged, to keep and preserve them in its possession as above said.

(g) This instrument is and shall be considered as additional to each and every one of the documents executed by reason of the debt of Aldecoa and Company by and between said firm of Aldecoa and Company and the Hongkong and Shanghai Banking Corporation all of which documents are hereby declared to remain
in *all* force and effect.

506 Done in the City of Manila, Philippine Islands, this 30th day of August, 1907.

For the Hongkong and Shanghai Banking Corporation,
(Sgd.) A. G. STEPHEN.

For Aldecoa and Company, in Liquidation,
(Sgd.) WILLIAM URQUHART.

Signed in the presence of:

(Sgd.) CHARLES C. COHN.

(Sgd.) A. W. BEAM.

We severally swear that the foregoing mortgage is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and the same is a just and valid obligation and one not entered into for the purpose of fraud.

For the Hongkong and Shanghai Banking Corporation,
(Sgd.) A. G. STEPHEN.

For Aldecoa and Company, in Liquidation,
(Sgd.) WILLIAM URQUHART.

507 UNITED STATES OF AMERICA,
City of Manila, Island of Luzon,
Philippine Islands, ss:

In the City of Manila on the 30th day of August 1907, A. D., personally appeared Messrs. William Urquhart and Alexander Stephen, the parties who signed the foregoing affidavit as to the facts therein consigned and made of to the truth thereof before

me. Said gentlemen exhibited their respective certificates of cedula No. A-1,488,603 and A-1,479,705, issued in Manila the 8th day of February and 18th of January 1907.

In witness whereof, I have hereunto set my name and affixed my official seal the *date*, month and year above mentioned.

[NOTARIAL SEAL.] (Sgd.)

D. R. WILLIAMS,

Notary Public.

My commission expires on December 31, 1908.

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EXHIBIT "D."

I, Jose Maria Rosado y Calvo, attorney at Law and Notary Public for the City of Manila, being a resident thereof, certify: that Mr. William Urquhart, merchant, of lawful age single, and resident of this City with cedula No. 1,330,176 issued on January 25, 1906, by the Collector of Internal Revenue of this City personally appeared before me and requested me to issue a certified copy of the minutes of the session held by the partners of Aldecoa and Company on January 2, 1907, appearing at page 139 of the Book of Minutes of said firm duly sealed by the Court of the Justice of the Peace of Binondo of this City and complying with said request I hereby make it known:

That at page 139 of the Book of Minutes of the firm of Aldecoa and Company if this City there appears the minutes of the session of the meeting held by the partners of said firm on January 2, 1907, which literally copied is as follows:

"Act No. 44. In the City of Manila, on the 2nd day of January 1907, the session having been called to order at 4:00 p. m. and present the gentlemen whose names appear on the margin, all of them being partners and representatives of the firm of Aldecoa and Company, in the office of said firm of Aldecoa and Company, the following resolutions were passed: Resolved, that the partnership shall enter into a period of liquidation by reason of the expiration of the social term thereof on December 31, 1906. The managing partner Mr. Alexander S. Macleod having refused to be appointed liquidator of the partnership Mr. W. Urquhart is appointed by unanimous vote and he is hereby invested with all the faculties and power which as such liquidator the Code of Commerce and the other laws now in force or which may hereafter be in force may confer upon him since to that effect he is given all the necessary powers. Mr. Zobel (Don Fernando) is hereby empowered to intervene in the liquidation and examine the same, advising whatever might be convenient to the interest of the partnership. Mr. Urquhart shall sign as follows: For Aldecoa and Company in liquidation W. Urquhart. And there being no further business to transact the meeting was adjourned at 4:15 p. m. all the members present signing herein in accordance thereto. (Sgd.) A. S. Macleod.—For my Principal (Sgd.) Fernando Zobel.—(Sgd.) William Urquhart.—On the margin the following names appear: A. S. Macleod, W. Urquhart, F. Zobel representing Doña Isabel

510 Palet y Gabarro, widow of Aldecoa, Don Joaquin I. de Aldecoa, Don Zoilo I. de Aldecoa and Don Cecilio Tremoya."

In witness whereof I have signed my name at the foot of this certificate and placed my official seal in Manila this 4th day of January, 1907.

[NOTARIAL SEAL.]

(Sgd.)

JOSE MARIA ROSADO Y CALVO,

Notary Public.

My commission expires December 31, 1908.

(There is a P0.20 documentary stamp.)

The foregoing document has been registered at sheet No. 156 quadruplicate folio 107 entry No. 12 Volume 6 of the Book of Partnership of the Mercantile Registry of this City.

Manila, January 8, 1907.

(Sgd.)

DR. ENRIQUE BARRERA Y CALDES.

(There is a seal which reads: Mercantile Registry of Manila.)

(There is a P0.20 documentary stamp.)

2.

On December 28, 1909 defendant Hongkong and Shanghai Banking Corporation filed the following demurrer against the foregoing complaint:

511 (Heading and Title of the Case.)

Now comes the Hongkong and Shanghai Banking Corporation, defendant in the above entitled case, and files a demurrer against the plaintiff's complaint, based on the following grounds, to wit:

1. That the facts alleged in the complaint do not constitute right of action against the said defendant Hongkong and Shanghai Banking Corporation.

2. That there is a defect of parties defendant for this reason, to wit: that it appears in the complaint that Aldecoa and Company in liquidation is one of the parties in interest in the subject matter of said action, but it is not included as a party defendant in said suit.

3. That there is a confusion of parties defendant in said case, to wit: that from the complaint there appears that William Urquhart, liquidator of Aldecoa and Company is not a party in interest in the subject matter of said action, but he is included therein as a party defendant.

4. That plaintiffs lack personality to file a complaint based on the cause of action alleged in the complaint filed herein inasmuch as said complaint shows that said plaintiffs have no legal interest in the subject matter of said case.

512 5. That plaintiff Alfredo Chicote lacks capacity to sue as guardian ad litem of Joaquin Ibañez de Aldecoa.

Therefore, said defendant Hongkong and Shanghai Banking Corporation asks this Court that the complaint be dismissed with costs. Manila, P. I. December 20, 1909.

HAUSSERMANN, ORTIGAS, COHN AND
FISHER,

P. P. CHARLES C. COHN,
*Attorneys for Defendant the Hongkong
and Shanghai Banking Corporation.*

3.

On January 5, 1910, plaintiffs filed an amended complaint as follows:

(Heading and Title of the Case.)

Now come the undersigned attorneys and on behalf of plaintiffs state:

I.

That plaintiffs are all of age, and in full enjoyment of their civil rights except Joaquin I. de Aldecoa, who on account of having been declared spendt-rift, is assisted by his guardian, Don Alfredo Chicote duly appointed and qualified by the Court of First Instance of Manila, on January 28, 1909.

II.

The defendant the Hongkong and Shanghai Banking Corporation is a foreign Banking Corporation duly registered and licensed
513 to engage in business as such in the Philippine Islands.

III.

Defendant Aldecoa and Company in liquidation is a general mercantile partnership duly organized and registered under the laws of the Philippine Islands domiciled in the City of Manila, which on December 31, 1906, finished its mercantile transactions by reason of the expiration of the social term and entered in a period of liquidation.

IV.

Defendant William Urquhart is the duly appointed liquidator of the said firm of Aldecoa and Company and who acts as such from the 1st day of January, 1907, up to the present and has his office at plaza del P. Moraga, district of Binondo, of this City.

V.

On September 30, 1908, the Court of First Instance of Manila,

in Civil Case No. 6087 filed by plaintiffs herein against Aldecoa and Company in liquidation, which is also one of the defendants in this case, rendered final judgment in favor of these plaintiffs for the sum of P155,127.31 together with the interests and costs, copy of which judgment appears already in this record, marked Exhibit "A" attached to the original complaint, the contents of which are made part hereof.

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VI.

That when said judgment became final, the Court issued a Writ of Execution thereon, by virtue of which all the property which according to the best information and belief of these plaintiffs was in possession of Aldecoa and Company, was levied and executed.

VII.

That out of the proceeds of said execution, these plaintiffs have recovered the sum of P17,022.28, only, there being still a balance of P149,492.77, in their favor, which these plaintiffs have not recovered yet, plus the interest thereon at the rate of six per cent per annum (6%), from the 10th day of August, 1909, which was the date of the last execution.

VIII.

On August 14, 1907, defendant Aldecoa and Company in liquidation through its liquidator William Urquhart became the owner of certain shares or certificates of stock of the Pasay Estate Company Limited, numbered 65 to 97 inclusive in payment of a certain credit which the firm of Aldecoa and Company had against Mr. Alexander Macleod, the former owner of said certificates of stock as it all appears from the public instrument executed by both parties on said date August 14, 1907, copy of which document already appeared in this record, marked Exhibit "B" attached to the original complaint, the contents of which are made part of this allegation.

IX.

Plaintiffs are informed and so do they allege that the said certificates of stock of the Pasay Estate Company Limited, owned by Aldecoa and Company in liquidation are in possession and under the custody of the defendant Hongkong and Shanghai Banking Corporation and that said Banking Corporation claims to have a right to retain said certificates under and by virtue of a certain agreement entered into by and between the managing directors thereof and the liquidator of Aldecoa and Company in liquidation which agreement was executed and extended in a public instrument, which is already attached to this record, marked Exhibit "C" as part of the original complaint, and the contents of which are made part of this allegation.

X.

The powers under which the liquidator William Urquhart claims to have capacity to execute the agreement referred to in the foregoing paragraph, are enumerated according to said agreement in *a* certain minutes of the resolutions adopted by the partnership, copy of which is the document marked Exhibit "B" which already appears in this record attached to the original complaint, and the contents of which are now made part of this allegation.

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XI.

Plaintiffs allege that said agreement Exhibit "C" has been entered into by the defendant William Urquhart without any express authority conferred by the partners or by law, and without any power as liquidator to enter into such an agreement; and that said agreement is on the contrary expressly forbidden by law; is contrary to law and is therefore a contract which in itself is null and void and of no effect, aiming as it does to make the Hongkong and Shanghai Banking Corporation an exceptionally privileged creditor in fraud and to the damage of the other creditors of Aldecoa and Company amongst which are these plaintiffs.

XII.

Based on the foregoing allegations, plaintiffs in this case asked the Court in the supplementary proceedings for the execution of the judgment in the above said case No. 6087 to order the Hongkong and Shanghai Banking Corporation to deposit said certificates of stock in Court, and to have the same sold at public auction and apply the proceeds thereof to the satisfaction of the judgment; but the Hongkong and Shanghai Banking Corporation opposed said petition on the ground that by virtue of the contract marked Exhibit "B,"

517 said certificates of stock had been delivered to said bank by the liquidator of Aldecoa and Company, as a further security, in addition to that executed before, in favor of said bank for the payment of a certain indebtedness of Aldecoa and Company to said bank.

XIII.

The Court denied the petition of these plaintiffs, but gave them permission, however, to file the proper action against the said Bank, in order to recover said certificates of stock.

XIV.

Therefore plaintiffs ask that judgment be rendered in their favor and against the defendant

(a) Decreeing that the agreement marked Exhibit "C" of this complaint executed by and between William Urquhart as liquidator

of Aldecoa and Company and the Hongkong and Shanghai Banking Corporation be declared null and void per se;

(b) Declaring that the certificates of stock Nos. 65 to 97 of the Pasay Estate Company Limited are the property of Aldecoa and Company and that said Bank has not acquired or has any title, right or interest to said certificates of stock;

(c) Ordering the Sheriff of Manila to take possession of said certificates of stock Nos. 65 to 97 of the Pasay Estate Company limited and to sell them on execution of the judgment rendered in civil case No. 6087 of this Court;

518 (d) Giving these plaintiffs whatever other remedy may be just and equitable and the costs of this case.

Manila, January 4, 1910.

CHICOTE AND MIRANDA,
Attorneys for Plaintiffs.

4.

On January 10, 1910, defendant the Hongkong and Shanghai Banking Corporation filed the following demurrer to the foregoing amended complaint:

(Heading and Title of the Case.)

Now comes defendant the Hongkong and Shanghai Banking Corporation in the above entitled case and files its demurrer to the amended complaint of plaintiffs filed in said action basing it in the following reasons, to wit:

1. That the facts alleged in the complaint do not constitute a right of action against said defendant Hongkong and Shanghai Banking Corporation.

2. That plaintiffs lack personality to file suit on the alleged cause of action stated in their complaint inasmuch as such complaint shows that plaintiffs have no legal interest in the subject matter of said action.

Therefore said defendant Hongkong and Shanghai Banking Corporation ask- this Court to dismiss the complaint insofar as
519 this defendant is concerned with costs.

Manila, P. I., January 10, 1910.

HAUSSERMANN, ORTIGAS, COHN &
FISHER,

p. p. JOHN W. HAUSSERMANN.

5.

The foregoing demurrer was heard on February 10, 1910, whereupon the Honorable Manuel Araullo Judge of the Court of First Instance of Manila, rendered the following order overruling the said demurrer:

(Heading and Title of the Case.)

The demurrer to the complaint filed by counsel for the Hongkong and Shanghai Banking Corporation having been called for hearing and the Court after considering the allegations in the complaint being of the opinion that said demurrer is not proper,

The demurrer is overruled and defendant granted five days to answer.

Manila, February 10, 1910.

(Sgd.)

MANUEL ARAULLO, *Judge.*

6.

Against the foregoing order of the Court and on February 14, 1910, defendant Hongkong and Shanghai Banking Corporation filed the following exception:

520

(Heading and Title of the Case.)

Now comes defendant Hongkong and Shanghai Banking Corporation through its counsel and files its exception against the order of this Court dated February 10, 1910 in the above entitled case overruling the demurrer filed by this defendant against the amended complaint and asks that this exception be duly recorded in the registry of this Court.

Manila, February 12, 1910.

HAUSSERMANN, ORTIGAS, COHN AND
FISHER,

p. p. CHARLES C. COHN,

*Attorneys for the Defendant Hongkong
and Shanghai Banking Corporation.*

7.

On February 15, 1910, attorneys Sanz and Opisso on behalf of defendant Aldecoa and Company in liquidation, filed the following answer:

(Heading and Title of the Case.)

Defendant Aldecoa and Company in liquidation answering to the complaint denies each and every one of the allegations contained in the same.

Manila, February 14, 1910.

SANZ AND OPISSO,
Attorneys at Law.

Plaza del P. Moraga 20, Manila.

8.

521 In compliance with the order of the Court dated February 10, 1910, defendant Hongkong and Shanghai Banking Corporation on February 17, 1910, filed the following answer to plaintiffs' complaint:

(Heading and Title of the Case.)

Now comes defendant the Hongkong and Shanghai Banking Corporation and in answer to the amended complaint filed in the above entitled case states:

I.

That said defendant denies generally and specifically each and every one of the allegations contained in the amended complaint and in the whole of the same.

That by way of second answer distinct and separate from the first, this defendant:

1. Admits the allegations contained in paragraphs I, II, III and IV, of the amended complaint, denying each and every one of the other allegations of said complaint.

2. Alleges that on January 24, 1907, a meeting was held by the partners of the said firm of Aldecoa and Company in order to decide upon the manner and means of winding up said partnership. That at said meeting the attorneys agreed on the manner and form to wind up the partnership said agreement appearing in the minutes of said meeting which are recorded in the Book of Partnerships of the Mercantile Registry of this City, a copy of said minutes wherein the resolutions of said meeting is made appear is attached
522 hereto and made part of this answer marked Exhibit "A."

3. Alleges that thereafter, to wit, on June 13, 1907 at which date said firm of Aldecoa and Company was in its period of liquidation a certain agreement was entered into and executed by and between Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Doña Isabel Palet y Gabarro viuda de Aldecoa, all of them as partners of the first part; Aldecoa and Company in liquidation, as party of the second part; and the Hongkong and Shanghai Banking Corporation, as party of the third part; Whereby, the parties of the first and of the second part agreed to apply in their entirety to the satisfaction pro tanto of the credit which the firm of Aldecoa and Company or Aldecoa and Company in liquidation owed to the party of the third part all of the proceeds of a certain litigation which was about to be instituted by Aldecoa and Company in liquidation against Alexander S. Macleod, relative to certain shares of the Company known as the Pasay Estate Company Limited; said shares of stock being those numbered 65 to 97 inclusive to which plaintiffs' amended complaint in the above entitled case makes reference. Copy of this agreement is attached hereto and made part of this answer marked Exhibit "B."

523 4. Alleges that thereafter, to wit: on August 14, 1907 suit having been filed by Aldecoa and Company against said Alexander S. Macleod over the shares of stock of the Company known as the Pasay Estate Company Limited to which said suit referred, the same was compromised under and by virtue of a certain compromise which appears in a certain agreement made and executed on said 14th day of August 1907. That on said date August 14, 1907 Aldecoa and Company in liquidation executed together with the Banking concern the Hongkong and Shanghai Banking Corporation a written agreement under and by virtue of which it was stipulated, agreed and understood expressly that nothing contained in the instrument of compromise should be considered or interpreted as a modification, novation or rescission or revocation of a contract duly made and executed on the 13th of June, 1907, in other words the agreement a copy of which is attached hereto marked Exhibit "B"; and whereby the said Aldecoa and Company in liquidation recognized and confirmed its obligation to deliver the shares of stock and their corresponding dividends to the Banking concern Hongkong and Shanghai Banking Corporation in accordance with said agreement of June 13, 1907. That a copy of said agreement of August 14, 1907, is attached to this answer, marked Exhibit "C" and made part hereof.

524 5. It alleges that thereafter, to wit: on August 30, 1907, under and by virtue of the agreements above referred to Aldecoa and Company in liquidation executed an instrument mortgaging said shares of the Company known as the Pasay Estate Company Limited Nos. 65 to 97 inclusive to the banking concern Hongkong and Shanghai Banking Corporation. A copy of said document dated August 30, 1907, is attached hereto marked Exhibit "D" and made part hereof.

6. Alleges that at the present time and at all times from said 30th day of August 1907 the Hongkong and Shanghai Banking Corporation has and keeps in its possession said shares of stock for the effects of the mortgage recorded and executed by virtue of said instrument marked Exhibit "D." That said mortgage has never been cancelled rescinded or revoked in any manner or form whatever and is still valid and subsisting.

Wherefore, said defendant *praises* for judgment dismissing the amended complaint and sentencing plaintiffs to pay the costs of this case.

HAUSSERMANN, ORTIGAS, COHN &
FISHER,
p. p. CHARLES C. COHN,
*Attorneys for Defendant the Hongkong and
Shanghai Banking Corp'n.*

525

"A."

"13.—Act No. 45.—(On the margin). A. S. Macleod, F. Zobel on behalf of Doña Isabel Palet y Gabarro widow of Aldecoa,"
* * * "In the City of Manila, this 24th of January, 1907,

Messrs. Alexander S. Macleod on his own behalf, and Don Fernando Zobel y de Ayala as attorney in fact of Doña Isabel Palet viuda de Aldecoa, the latter and the former being partners of said firm representing the largest share of the firm's capital having met at the domicile of the partnership Aldecoa and Company in liquidation situated at No. 9 Plaza del P. Moraga, Binondo, of this City, after having called the meeting to order and considering again the best way to proceed to the winding up the business of the firm, Resolve: Whereas we believe that it is most convenient for the interest of all the partners and of the creditors of Aldecoa and Company that the liquidation be carried on as slowly as possible inasmuch as in that manner there would be greater probability to succeed in getting all the debtors of the firm to pay in full the amount of their debts and to sell certain part of the business as a going concern.—Whereas it is also convenient to collect from some debtors in the best possible manner for the interest of all, the total amount of their debt receiving in

526 payment if necessary the property and rights of the same.—

Whereas the other partners are absent and there is no one to represent them legally and we jointly have or represent the largest share of the firm's capital.—Therefore we at this meeting resolve to authorize as we do hereby the liquidator Mr. William Urquhart for him as such liquidator to do and execute the following acts: to wit:—(a) to wind up the business slowly, he is hereby authorized to continue doing business only with those consignors who are solvent and whose seriousness and formality is known to the firm, continuing to that effect with their consignments, so as with the proceeds of the same to attend to the maintenance and best development of the liquidation—(b) to secure from the Hongkong and Shanghai Banking Corporation the assistance of said bank in the winding up of the firm's business obtaining therefrom on long — the amounts which he may need for the payment of other debts and for the maintenance of the liquidation; he being also authorized to sign and execute whatever documents either public or private be necessary or convenient to carry out any agreement entered into by Aldecoa and Company with the Hongkong and Shanghai Banking Corporation.—

(c) to bring writ against those debtors of the firm when he
527 may think necessary to sue in order to obtain the immediate payment of their debts.—(d) to receive in payment of debts, real and personal property, rights and actions of the debtors of the firm in liquidation.—(e) to remit those debts which may be impossible to collect, in exchange from some benefits from the debtors in favor of the partners of Aldecoa and Company and the creditors of this firm.—(f) to compromise suits and differences whenever any benefit may be derived thereby to the partners of Aldecoa and Company or its creditors.—(g) to adjudicate in payment of debts of the firm in liquidation property, rights or actions of this firm.—(h) to sell all kinds of real and personal property and business of the firm for the price which he may think best, which price he may demand in cash or instalments, getting in the last case the necessary mortgage, security of pledges.—(i) to represent the liquidation before the Courts of justice either as plaintiff or as defendant, filing all the

actions which he may deem proper and prosecuting all cases through all processes until the final determination of the matters in question.—(j) to grant general or special power of attorney substituting any or all of the powers granted him hereby, in favor of any person.—(k) to execute whatever documents either public or private be

necessary for the execution of all the acts for which he is
 528 hereby authorized, with all clauses and requisites sufficient for validity thereof.—The authority and power which by virtue of this resolution are given to Mr. William Urquhart as liquidator of the firm of Aldecoa and Company shall not be interpreted as a limitation in any manner of the powers which said liquidator has as such in accordance with the Code of Commerce.—And there being no further business to discuss, the meeting was adjourned at 4:30 p. m. To all of which we agree.—(Sgd.) Alejandro S. Macleod.—Isabel Palet widow of Aldecoa, p. p. (Sgd.) Fernando Zobel.—I, Don Jose Maria Rosedo y Calvo, Attorney at law and Notary Public of the City of Manila and a resident thereof.—Certify that the foregoing is a faithful copy of its original which has been pointed to me and is contained in the Book of Minutes of the firm of Aldecoa and Company which has been exhibited to me by Mr. William Urquhart, a merchant, of lawful age, single, and resident of this City, for the effects of this testimony, and to which I refer. The applicant Mr. Urquhart exhibits also his certificate of Cedula No. A-1,330,176, issued by the Collector of Internal Revenue of this City, on January 25, 1906.—In witness whereof, I have signed my name at the foot of this certificate and placed my official seal in Manila, this 25th day of January, 1907.—Jose Maria Rosado y Calvo, Notary Public.—My commission expires on December 31, 1908.—Notarial seal.—So it appears from the document which has been exhibited to me, to which I refer and which had been filed in this Registry, at four o'clock to day, Manila, P. I., January 25, 1907.—
 529 Dr. Enrique Barrera y Caldes.—Rubricated.

“B.”

This memorandum of agreement, made and entered into this 13th day of June, 1907, by and between Don Joaquin Ybanez de Aldecoa y Palet, Don Zoilo Ybanez de Aldecoa y Palet, y Doña Isabel Palet y Gabarro, widow of Aldecoa, all as parties of the first part; Aldecoa and Company in liquidation as party of the second part; and the Hongkong and Shanghai Banking Corporation, as party of the third part:

Witnesseth, That for and in consideration of the furnishing, by the party of third part, of a bond in the sum of Fifty Thousand — (P50,000) in the litigation which is about to be instituted by the party of the second part against Alejandro S. Macleod, relative
 530 to certain shares of the company known as Pasay Estate Company Limited, whose value amounts to One Hundred Sixty Thousand pesos Philippine currency, (P160,000) which said bond must be furnished in order to obtain in said litigation

an injunction to prevent the alienation of said shares or the proceeds thereof while said litigation is pending.

The parties of the first part and second part agree and stipulate:

1st. That the proceeds of said litigation against the said Macleod, in the event that a decision favorable to the plaintiff therein be obtained, shall be applied in their entirety to the satisfaction pro tanto of the credit which the firm of Aldecoa and Company, or Aldecoa and Company in liquidation owes to the party of the third part, deducting from said proceeds only the necessary expenses of said litigation including the fees of the attorneys who shall represent the said plaintiff, and the balance shall be delivered to the said creditor party for the purpose aforesaid.

2nd. That in the event that the said party the Hongkong and Shanghai Banking Corporation, shall incur responsibility as bondsman in the said litigation, the obligation of the Aldecoa and Company concern to indemnify said party in the amount of said responsibility shall be added to the amount of the credit which

531 said firm is owing to the said bank, and the payment thereof to the latter shall be guaranteed by the same mortgages constituted, mentioned and described in the escritura executed by the parties of the first and second parts in favor of said bank of February 23, 1906, (a copy of which is hereto attached and made a part of this escritura) upon the same conditions and terms of said mortgage.

3rd. That the Hongkong and Shanghai Banking Corporation shall not be responsible directly or indirectly for the payment of the costs or expenses of the said litigation, to wit: Court costs, attorneys' fees, etc., etc.

4th. That the respective parties above named obligate themselves to make and execute whatever escrituras or documents may be necessary in order to carry out and duly establish the purposes hereinabove set forth.

In witness whereof, they sign the present document at Manila this 13th day of June in the year one thousand nine hundred and seven (1907).

For Isabel Palet and Zoilo Y. de Aldecoa,

(Sgd.)

J. M. Y. DE ALDECOA.

For Aldecoa and Company in liquidation,

(Sgd.)

WILLIAM URQUHART.

(Sgd.)

JOAQUIN Y. DE ALDECOA.

Signed in the presence of:

(Sgd.) CHARLES C. COHN.

532 UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila, this 13th day of June, 1907, before me appear Don Jose Ma. Ibañez de Aldecoa, as attorney in fact and legal representative of Doña Isabel Palet y Gabarro, widow of Aldecoa,

and Don Zoilo Ybañez de Aldecoa y Palet; Don Joaquín Ibañez de Aldecoa y Palet, in his own right; Don William Urquhart, as liquidator of the firm of Aldecoa and Company in liquidation; and Mr. Alexander Gordon Stephen, in representation of the Hongkong and Shanghai Banking Corporation, whom I know to be the persons who executed the foregoing document, which they ratify and declare to be an act of their free and voluntary will and execution.

Said parties so appearing exhibited to me their personal cédulas, the first No. 674, issued at Manila the 6th day of June, 1907; the second No. B164,876 issued at Manila the 13th day of May, 1907; the third No. A1,488,603 issued at Manila the 8th day of February, 1907; and the last No. A1,479,705 issued at Manila on the 18th day of January, 1907.

In witness whereof I have affixed my signature at the foot of this certificate and attached my official seal on the day, month and year above mentioned.

[NOTARIAL SEAL.] (Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires December 31st, 1908.

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"C."

This memorandum of agreement, made and executed at Manila, this 14th day of August, 1907, by and between William Urquhart, as liquidator of the firm of Aldecoa and Company, party of the first part, and the Hongkong and Shanghai Banking Corporation, party of the second part:

Witnesseth: That for and in consideration of the execution by the respective parties of a certain instrument made and executed on this date, and to avoid a misinterpretation of the same, it is hereby stipulated, agreed and understood by and between the parties above named, as follows:

I.

It is expressly stipulated, agreed and understood by and between the respective parties that nothing contained in the instrument above mentioned shall be considered or interpreted as a modification, novation, rescission or revocation of a contract duly made and executed on June 13th, 1907, by and between Don Joaquín Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet, and Doña Isabel Palet, viuda de Aldecoa, as parties of the first part; Aldecoa and Company as party of the second part, and the Hongkong and Shanghai Banking Corporation as party of the third part, whereby there has been stipulated and agreed the trans-

534 fer unto the said bank of the shares of the Pasay Estate

Company Limited, recovered by Aldecoa and Company in liquidation from Alejandro S. Macleod, in guaranty or partial satisfaction of the balance owed by the said firm Aldecoa and Company in liquidation unto the Hongkong and Shanghai Bank, together

with the remaining proceeds of the action prosecuted in the Court of First Instance of Manila for that purpose.

And in view of the termination of the said action by means of the instrument referred to, the party of the first part recognizes and confirms its obligation to deliver said shares and their corresponding dividends unto the Hongkong and Shanghai Bank in accordance with said agreement of June 13, 1907, after making the deductions therein stipulated, without prejudice to the agreement which the interested parties may hereafter make to credit their value upon the said balance or to credit only the remaining dividends and leave the shares as additional guaranty of the indebtedness of Aldecoa and Company in liquidation.

II.

It is also mutually stipulated, agreed and understood that nothing contained in the instrument above referred to shall be considered or interpreted as a modification, novation, rescission or revocation of the obligation contracted heretofore by the firm of Aldecoa and Company and by the liquidation of this firm to transfer and deliver to the Hongkong and Shanghai Banking Corporation the credit due and payable by the firm widow and sons of Escañó as balance of the first account current between this firm and the firm of Aldecoa and Company.

And inasmuch as the suit filed to that effect by the Hongkong and Shanghai Banking Corporation against Alexander S. Macleod and others has come to an end by reason of the said instrument, the party of the first part hereby acknowledges and confirms its obligation to deliver and transfer to the Hongkong and Shanghai Banking Corporation the said credit together with the documents which credit the same as partial and pro tanto payment of said balance owed by Aldecoa and Company in liquidation to the said Bank.

In witness whereof the respective parties have signed this document on the 14th day of August 1907.

For Aldecoa and Company, in Liquidation,

WM. URQUHART.

For the Hongkong and Shanghai Banking Corporation,

(Sgd.)

A. G. STEPHEN, *Manager*.

536

"D."

Know all by these presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of this City, as liquidator of the firm of Aldecoa and Company, of this City, now in liquidation, on account of the expiration of the term of said partnership, by virtue of an appointment made in my favor and which is registered in the Mercantile Registry of this City at folio 107 Registry 12 of Volume XVI of the Book of Partnerships; and Mr. A. G. Stephen, merchant, of lawful age, married and resident of

this City, on behalf of the Hongkong and Shanghai Banking Corporation of which I am Manager and Director in Manila, Philippine Islands, hereby make know:-

Whereas, by an instrument ratified and signed in this City before the Notary Public of the same Don Jose Ma. Tosado on February 23, 1906 the Hongkong and Shanghai Banking Corporation and Aldecoa and Company entered into an agreement by which the former binds itself to keep open in favor of the latter a credit in current account up to the sum of four hundred and seventy five thousand pesos (P475,000.00) Philippine currency subject to the conditions and securities which are prescribed more in detail in the document referred to.

537 Whereas, at a later date the contracting parties herein also agreed that if certain shares of the Pasay Estate Company were declared to be the property of Aldecoa and Company in liquidation, said shares would be given by the debtor company to the creditor Company as a further guaranty.

Whereas, the said shares of the Pasay Estate Company Limited have become the property of said Aldecoa and Company in liquidation.

Therefore the contracting parties herein stipulate and agree as follows:

(a.) Aldecoa and Company in liquidation, represented by its liquidator William Urquhart, as mortgagor, by these presents transfer and mortgages to the Hongkong and Shanghai Banking Corporation the mortgages, the shares of the Pasay Estate Company Limited which are hereby delivered to said mortgagee for the custody and preservation thereof, said shares of the Pasay Estate Company Limited being described in detail as follows:

Certificate No. 65, ten shares Nos. 633 to 642.

"	"	66	"	"	"	643	"	652.
"	"	67	"	"	"	653	"	662.
"	"	68	"	"	"	663	"	672.
"	"	69	"	"	"	673	"	682.

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Certificate No. 70, ten shares Nos. 683 to 692.

"	"	71	"	"	"	693	"	702.
"	"	72	"	"	"	703	"	712.
"	"	73	"	"	"	713	"	722.
"	"	74	"	"	"	723	"	732.
"	"	75	"	"	"	733	"	742.
"	"	76	"	"	"	743	"	752.
"	"	77	"	"	"	753	"	762.
"	"	78	"	"	"	763	"	772.
"	"	79	"	"	"	773	"	782.
"	"	80	"	"	"	783	"	792.
"	"	81	"	"	"	793	"	802.
"	"	82	"	"	"	803	"	812.
"	"	83	"	"	"	813	"	822.
"	"	84	"	"	"	823	"	832.

Certificate No.	85,	ten	shares	Nos.	833 to 842.
"	"	86	"	"	" 843 " 852.
"	"	87	"	"	" 853 " 862.
"	"	88	"	"	" 863 " 872P.
"	"	89	"	"	" 873 " 882.
"	"	90	"	"	" 883 " 892.
"	"	91	"	"	" 893 " 902.
"	"	92	"	"	" 903 " 912.
"	"	93	"	"	" 913 " 922.
"	"	94	"	"	" 923 " 932.
"	"	95	"	"	" 933 " 942.
"	"	96	"	"	" 943 " 952.
"	"	97	two	"	" 953 " 954.

539 (b.) This mortgage is executed as additional for the payment for the said Hongkong and Shanghai Banking Corporation, the mortgagee, of the amount for which Aldecoa and Company, the mortgagor, may be indebted to it by reason of the credit in current account which is mentioned in the first paragraph of this document and of whatever other amounts which said mortgagor may owe to the said mortgagee in the future.

(c.) The mortgagee is hereby authorized to collect and receive from the Pasay Estate Company Limited all dividends, bonuses, or any other distribution of Capital and profits which said Company may distribute on account of the said shares hereby mortgaged issuing the corresponding receipts and acknowledgments of payments for the amounts so received and applying the amounts so collected by the mortgagee to the partial payment (that is to say, as far as they may reach) of the account of the mortgagor Aldecoa and Company in liquidation, until the final, liquidation of said debt, and if there should be any excess, this excess shall then be paid to said Aldecoa and Company in liquidation.

(d.) The conditions of this obligation are: If the mortgagor, its heirs or successors, executors, or administrators, should
540 pay to the mortgagee the whole amount owed or which may be owed by them, this obligation shall be null and void.

(e.) Aldecoa and Company in liquidation reserves to itself the right to sell the shares of the Pasay Estate Company Limited above mentioned, provided that on making the sale, the purchaser shall deposit into the Bank the whole amount of purchase price; *being it* understood that the price so paid by the purchaser shall be applied to the reduction of the debt of Aldecoa and Company, said shares being released in that case from all incumbrance.

(f.) The Hongkong and Shanghai Banking Corporation acknowledges to have received the shares hereby mortgaged to keep and preserve them in its possession as above said.

(g.) This instrument is and shall be considered as additional to each and every one of the documents executed by reason of the debt of Aldecoa and Company by and between said firm of Aldecoa and Company and the Hongkong and Shanghai Banking Corporation

all of which documents are hereby declared to remain in *all* force and effect.

541 Done in the City of Manila, Philippine Islands, this 30th day of August, 1907.

For the Hongkong and Shanghai Banking Corporation,
(Sgd.) A. G. STEPHEN.

For Aldecoa and Company in Liquidation,
(Sgd.) WILLIAM URQUHART.

Signed in the presence of:

(Sgd.) CHARLES C. COHN.

(Sgd.) A. W. BEAM.

We severally swear that the foregoing mortgage is made for the purpose of securing the obligation specified in the conditions hereof, and for no other purpose, and the same is a just and valid obligation and one not entered into for the purpose of fraud.

For the Hongkong and Shanghai Banking Corporation,
(Sgd.) A. G. STEPHEN.

For Aldecoa and Company in Liquidation,
(Sgd.) WILLIAM URQUHART.

542 UNITED STATES OF AMERICA,
City of Manila, Island of Luzon,
Philippine Islands, ss:

In the City of Manila on the 30th day of August 1907, A. D., personally appeared Messrs. William Urquhart and Alexander Stephen, the parties who signed the foregoing affidavit as to the facts therein consigned and made *of* to the truth thereof before me. Said gentlemen exhibited their respective certificates of cedula No. A-1,488,603 and A-147,905, issued in Manila the 8th day of February and 18th of January 1907.

In witness whereof, I have hereunto set my name and affixed my official seal the *date*, month and year above mentioned.

[NOTARIAL SEAL.] (Sgd.)

D. R. WILLIAMS,

Notary Public.

My commission expires on December 31, 1908.

543

9.

On April 11, 1910, plaintiffs through their attorneys filed the following amendment to the amended complaint, filed by the same on January 4, 1910.

(Heading and Title of the Case.)

The undersigned attorneys on behalf of plaintiffs amend the amended complaint of January 4, 1910 adding to paragraph IV the following:

"Plaintiff Zoilo I. de Aldecoa was during the whole year 1907

under 23 years of age and had no guardian of his property nor was provided with any legal representation whatsoever to manage, sell or dispose of his property or interests."

Manila, April 11, 1910.

CHICOTE AND MIRANDA,

Attorneys for Plaintiffs.

10.

On the 12th day of April 1910, defendant Hongkong and Shanghai Banking Corporation filed the following demurrer to the second amended complaint:

(Heading and Title of the Case.)

Now comes defendant Hongkong and Shanghai Banking Corporation in the above entitled case and files a demurrer to the amended complaint filed by plaintiff in said action based in the following motive, to wit:

544 That the facts alleged in the complaint do not constitute right of action against said defendant Hongkong and Shanghai Banking Corporation.

Wherefore said defendant Hongkong and Shanghai Banking Corporation asks the Court to dismiss the complaint with costs.

Manila, P. I., April 11, 1910.

HAUSSERMANN, COHN AND FISHER,

p. p. CHARLES C. COHN,

*Attorneys for the Defendant Hongkong
and Shanghai Banking Corp'n.*

11.

The demurrer having been called to hearing on the 18th day of April, 1910, the Honorable Yusay, judge of the Court of First Instance of Manila, dictated the following order overruling said demurrer:

(Heading and Title of the Case.)

The demurrer filed by defendant the Hongkong and Shanghai Banking Corporation to the amended complaint having been called to hearing and there appearing no proper ground for the same,

Said demurrer is overruled and defendant is given five days to answer.

Manila, April 18, 1910.

YUSAY, *Judge.*

12.

In accordance with the foregoing order, defendant the Hongkong and Shanghai Banking Corporation filed its exception and on the 18th day of April, 1910, filed its answer to the second amended complaint, as follows:

(Heading and Title of the Case.)

Answer to the Second Amended Complaint.

Now comes defendant the Hongkong and Shanghai Banking Corporation, and answering the second amended complaint filed in the above entitled case, states:

1. That said defendant denies generally and specifically each and every one of the allegations contained in the second amended complaint and the whole of the same.

2. That by way of a second answer separate and distinct from the first, this defendant:

1. Denies each and every one of the allegations contained in paragraph I of the second amended complaint, and answering more specifically in regard to the subject matter of said paragraph I this defendant alleges:

That prior to June 13, 1907, to wit: in the year 1903, plaintiff Zoilo Ibañez de Aldecoa was legally and duly emancipated by the mother of said plaintiff, and by virtue of such emancipation
546 the plaintiff Zoilo Ibañez de Aldecoa on the 13th day of June, 1907, aforesaid was capable to manage his property as if he were of lawful age.

2. The said defendant admit- the allegation contained in paragraph II, III and IV of said second amended complaint, denying each and every one of the allegations contained in said second amended complaint.

3. Alleges that on January 24, 1907, a meeting was held by the partners of the said firm of Aldecoa and Company in order to decide upon the manner and means of winding up said partnership. That at said meeting the attorneys agreed on the manner and form to wind up the partnership said agreement appearing in the minutes of said meeting which are recorded in the Book of Partnerships of the Mercantile Registry of this City, a copy of said minutes wherein the resolutions of said meeting is made — appear, is attached to the original answer filed in this case, marked Exhibit "A" and made part hereof.

4. Alleges that thereafter, to wit, on June 13, 1907, at which date said firm of Aldecoa and Company was in its period of liquidation a certain agreement was entered into and executed by and between
547 Joaquín Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Doña Isabel Palet y Gabarro, viuda de Aldecoa, all of them as parties of the first part; Aldecoa and Company in liquidation as party of the second part; and the Hongkong and Shanghai Banking Corporation, as party of the third part; Whereby, the parties of the first and of the second part- agreed to apply in their entirety to the satisfaction pro tanto of the credit which the firm of Aldecoa and Company or Aldecoa and Company in liquidation owed to the party of the third part all of the proceeds of a certain litigation which was about to be instituted by Aldecoa and Company in liquidation against Alexander S. Macleod, relative to certain

shares of the Company known as the Pasay Estate Company Limited; said shares of stock being those numbered 65 to 97 inclusive to which plaintiffs' amended complaint in the above entitled case makes reference. Copy of this agreement is attached to the original answer filed in this case, marked Exhibit "B" and made part hereof.

5. Alleges that thereafter, to wit: on August 14, 1906, suit having been filed by Aldecoa and Company against said Alexander S. Macleod over the shares of stock of the Company known as the Pasay Estate Company Limited to which said suit referred, the same was compromised under and by virtue of a certain compromise which

appears in a certain agreement made and executed on said 548 14th day of August, 1907, That on said date August 14, 1907,

Aldecoa and Company in liquidation executed together with the Banking concern the Hongkong and Shanghai Banking Corporation a written agreement under and by virtue of which it was stipulated, agreed and understood expressly that nothing contained in the instrument of compromise should be considered or interpreted as a modification, novation, rescission or revocation of a contract duly made and executed on the 14th of June, 1907, in other words the agreement a copy of which is attached hereto marked Exhibit "B"; and whereby the said Aldecoa and Company in liquidation recognized and confirmed its obligation to deliver the shares of stock and their corresponding dividends to the Banking Concern Hongkong and Shanghai Banking Corporation in accordance with said agreement of June 13, 1906. That a copy of said agreement of August 14, 1907, is attached to the original answer filed in this case marked Exhibit "C," and made part hereof.

6. It alleges that thereafter, to wit: on August 30, 1907, under and by virtue of the agreements above referred to Aldecoa and Company in liquidation executed and instrument mortgaging said shares of the Company known as the Pasay Estate Company Limited Nos. 65 to 97 inclusive to the banking concern Hongkong and Shanghai

Banking Corporation. A copy of said document dated August 30, 1907, is attached to the original answer filed in this 549 case marked Exhibit "D" and made part hereof.

Wherefore, said defendant *praises* for judgment dismissing the second amended complaint and sentencing plaintiffs to pay the costs of this case.

Manila, P. I., April 18, 1910.

HAUSSERMANN, COHN AND FISHER,
*Attorneys for Defendant the Hongkong and
Shanghai Banking Corporation.*

13.

The case having been called for trial and the parties having been heard, the Honorable Don Estanislao Yusay, judge of the Court of First Instance of Manila, on August 31st, 1910, rendered the following decision:

(Heading and Title of the Case.)

This action was brought in consequence and by reason of the scarcely effective results obtained from the proceedings instituted for the execution of a certain final judgment which Joaquín Ibañez de Aldecoa Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa secured against Aldecoa and Company in liquidation, in civil case No. 6087 of this Court, by which judgment the defendant Aldecoa and Company in liquidation was sentenced to pay to said
550 plaintiffs the sum of one hundred fifty-five thousand one hundred twenty-seven pesos and thirty-one centavos (P155,127.31) to be distributed between them in the proportion in which Doña Isabel Palet y Gabarro made the deposit of two hundred four thousand one hundred eighty-four pesos and seventy-four centavos (P204,184.74), in said firm in the month of February, 1897, together with the interest thereon at the rate of six per cent (6%) per annum from May 16, 1908 until the date of payment.

The judgment which was the subject matter of those execution proceedings contains, amongst others, the statement that Doña Isabel Gabarro, the legitimate mother of these plaintiffs and general partner of Aldecoa and Company, in the month of February, 1897, deposited in said firm a sum of not less than two hundred four thousand one hundred eighty-four pesos and seventy-four centavos (P204,184.74) belonging to these plaintiffs; and that although no public instrument was executed, it was agreed that Doña Isabel Palet could at any time and on behalf — her children dispose freely of said money deposit; said deposit to have the same character as if it were a preferential obligation acknowledged by public instrument, Aldecoa and Company binding itself not to execute any instrument of credit nor to
551 contract any obligation which should be preferential to the one aforesaid, without first obtaining the personal consent of Doña Isabel Palet.

The firm of Aldecoa and Company entered into its period of liquidation by reason of the expiration of its social term on the 31st of December, 1906, and on January 24, 1907, a meeting was held by several partners of said firm, the largest part of the capital being there represented by Mr. Alexander S. Macleod, and Don Fernando Zobel, attorney in fact of Doña Isabel Palet widow of Aldecoa, who were present at said meeting, wherein it was agreed and resolved that the liquidation should be proceeded with in the slowest possible manner. It was also agreed at said meeting that Mr. William Urquhart should be authorized as such liquidator of Aldecoa and Company: (a) to continue business relations with the solvent and reliable clients of the concern, continuing with the consignments of the same, thus to attend to the maintenance and better consummation of the liquidation; (b) to deal with the Hongkong Bank for assistance in the liquidation obtaining from it the loans which may be required to pay other debts and to maintain the liquidation and for this purpose to execute whatever public or private documents may be necessary; (c) to sue the debtors of the concern who deserve

such treatment; (*d*) to receive in payment of debts, real and personal property, rights and actions of the debtors of the company; (*e*) to remit those debts which may be impossible to collect in exchange for some benefit from the debtors in favor of the partners of Aldecoa and Company and the creditors of this firm; (*f*) to compromise questions, suits and differences, provided that thereby some benefit be obtained for the partners of Aldecoa and Company and its creditors; (*g*) to award in payment of debts, property, rights or actions of the concern in liquidation; (*h*) to sell every kind of real and personal property or business of the firm, for the prices deemed fit, and to collect said prices in cash or instalments, in the latter case obtaining security by way of mortgage or pledge; (*i*) to represent the liquidation before the Courts of justice either as plaintiff or defendant, prosecuting all the actions which may be proper and performing all the acts, steps, negotiations and proceedings up to the final determination of the matters in which he may intervene; (*j*) to grant general or special power of attorney substituting any or all of the powers granted him hereby, in favor of any person; (*k*) to execute whatever public or private documents which might be necessary to carry out all of the acts authorized by this document, with the clauses and requisites sufficient for their validity. It was finally resolved that the authority and powers given Mr. William Urquhart as liquidator of the firm of Aldecoa and Company would not be interpreted as a limitation in any manner of the powers which said liquidator had as such under the Code of Commerce.

At this stage, Aldecoa and Company in liquidation proposed to bring suit against Don Alejandro Macleod over certain shares of stock of the Pasay Estate Company Limited, amounting to one hundred sixty thousand pesos (P160,000.00), in which case Aldecoa and Company wanted an injunction to prevent the sale of said shares or the proceeds thereof, during the pendency of the case, to which end plaintiff Aldecoa and Company had to file a bond for fifty thousand pesos (P50,000.00), which the Hongkong and Shanghai Banking Corporation consented to sign, in pursuance of an agreement executed on June 13, 1907, by and between William Urquhart and the representative of said Bank and Jose Maria Ibañez de Aldecoa, as attorney in fact and legal representative of Doña Isabel Palet y Gabarro and Don Zoilo Ibañez de Aldecoa, Don Joaquin Ibañez de Aldecoa signing also personally and in his own right. In that agreement the parties stipulated that the proceeds of said litigation against the said Alejandro Macleod, in the event that a decision favorable to the plaintiff therein should be obtained, should be applied in their entirety to the satisfaction pro tanto of the credit which the firm of Aldecoa and Company in liquidation owed to the Hongkong and Shanghai Banking Corporation, deducting from said proceeds only the necessary expenses of said litigation and that in the event that the Hongkong and Shanghai Banking Corporation should incur responsibility as bondsman in said litigation, the obligation of the firm of Aldecoa and Company to indemnify said Bank in the amount of said responsibility should be added to the amount which

said firm of Aldecoa and Company owed to said Bank and the payment thereof should be guaranteed by the same mortgage constituted in favor of the bank on February 23, 1906, by Joaquín Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, Isabel Palet y Gabarro and Aldecoa and Company.

That suit was compromised soon after it started without having been heard on the merits on the 14th day of August, 1907, Don Alejandro Macleod delivering to Aldecoa and Company in liquidation the disputed shares of stock of the Pasay Estate Company Limited, said shares being from that time declared and acknowledged by Macleod to be the property of Aldecoa and Company in liquidation. On that same date, William Urquhart executed, as liquidator of the concern another instrument confirming the obligation already
555 acknowledged in the former one, June 13, 1907, to deliver said shares of stock of the Pasay Estate Company Limited, to the Hongkong and Shanghai Banking Corporation, with the statement that nothing contained in the instrument whereby the compromise with Don Alejandro Macleod was effective, and in which the representative of said Bank took part to signify the consent of said bank, would be interpreted as a modification, novation, rescission or revocation of the contract executed on June 13, 1907. Shortly afterwards, on August 30, 1907, William Urquhart and the representative of the Hongkong and Shanghai Bank executed another document in order to carry out the stipulation agreed upon in the contracts of June 13, and August 14, 1907, whereby it is stated that Aldecoa and Company in liquidation, represented by its liquidator, William Urquhart, as mortgagor, transfers and mortgages to the Hongkong and Shanghai Banking Corporation the certificates of stock of the Pasay Estate Company Limited, numbered 65 to 97 each certificate being for ten shares numbered from 653 to 954 delivering said certificates to the bank for the custody and preservation thereof and as additional security for the payment to said Hongkong and Shanghai Banking Corporation, the mortgagee, of the amount which Aldecoa and Company, the mortgagor, was in debt to said bank by reason of the credit in current account which said bank declared to
556 have granted to Aldecoa and Company in the document dated

February 23, 1906, up to the sum of four hundred seventy-five thousand pesos (P477,000.00) and also to secure any other amount which Aldecoa and Company might in the future owe the bank who was also authorized to collect and receive from the Pasay Estate Company Limited all dividends, bonuses, or any other distribution of capital and profits which said company might distribute on account of the shares mortgaged, Aldecoa and Company in liquidation reserving to itself the right to sell said shares, provided that on making the sale, the purchaser should deposit in the bank the whole amount of the purchase price which would be applied to the reduction of the debt of Aldecoa and Company.

The credit opened in favor of Aldecoa and Company by the Hongkong and Shanghai Banking Corporation on February 23, 1906, being still in force or as yet unpaid, is a credit not yet due and payable in full, the term for its expiration having been fixed for five years,

from the date the same was granted and therefore it cannot be due and payable until February 24, 1911.

These are the facts proved in this case.

It also appears from the record that plaintiffs herein, in view of the scarce results obtained, as stated in the beginning, in the proceedings on execution instituted on the final judgment rendered in this case against Aldecoa and Company in liquidation, of which mention has already been made, whereby it is shown that only a small part of the amount owed to plaintiffs could be collected—seventeen thousand twenty-two pesos and twenty-eight centavos (P17,022.28) according to the complaint there being still a balance owed of one hundred forty-nine thousand four hundred twenty-two pesos and seventy-seven centavos (P149,422.77) plus six per cent interest on said sum from August 10, 1909,—said plaintiffs asked by supplementary proceedings on execution of said judgment that the Hongkong and Shanghai Banking Corporation should be ordered to deposit in this Court the certificates of stock of the Pasay Estate Company Limited, numbered 65 to 95 which said bank had in its possession belonging to the firm of Aldecoa and Company in liquidation, and that said certificates be sold in public auction and the proceeds thereof applied to satisfy the balance owed them by Aldecoa and Company, as it appears from the said judgment in civil case No. 6087. The Hongkong Bank was heard as interested party in that incidental proceeding objecting to plaintiff's petition alleging its right to retain said certificates of the Pasay Estate Company Limited by virtue of the mortgage executed in its favor on said certificates to secure the credit which it alleged to have against the firm of Aldecoa and Company. The Court dismissed plaintiffs' petition reserving them the right to file any action which they might deem convenient against said banking concern to recover said shares of stock.

This is, then, the origin of the present suit; whereby plaintiffs ask

1. That the agreement executed by William Urquhart, as liquidator of the firm of Aldecoa and Company, in favor of the Hongkong and Shanghai Banking Corporation, on August 30, 1907, whereby the former mortgaged and transferred to the latter the shares of stock of the Pasay Estate Company Limited and made delivery of the corresponding certificates thereof for their custody and preservation, be declared null and void.

2. That it be adjudged that said certificates of stock belong to Aldecoa and Company and that said bank never had or has at present any right, title or interest whatever in and to said certificates.

3. That the Sheriff of Manila be ordered to take possession of said certificates and to sell them on execution of the judgment rendered in the aforesaid civil case No. 6087.

From the facts heretofore stated as ground for the annullment of the agreement executed by William Urquhart as liquidator of Aldecoa and Company asked for in the complaint, plaintiffs draw the following conclusions:

1. That it is a fact established and found in the final judgment rendered by this Court in civil case No. 6087 offered in evidence in

this case and admitted as such by the Court whereby it appears that Aldecoa and Company in liquidation was sentenced to pay to these plaintiffs the sum of one hundred fifty five thousand one hundred twenty seven pesos thirty one centavos (P155,027.31) with interest and costs, that the deposit of this amount by Doña Isabel Palet y Gabarro in the firm of Aldecoa and Company as belonging to her children, plaintiffs herein, together with other sums of money collected by said lady before that suit was filed, was made since the month of February 1897, with the express understanding that said credit would be considered as acknowledged by public instrument and should be preferential and that Aldecoa and Company bound itself as it deed not to execute any instrument or credit nor to contract any obligation which would have preference to the one just referred to without having first obtained the personal consent of Doña Isabel Palet y Gabarro. *This facts have not been denied or contradicted by the defendant.*

2. That amongst the powers conferred by the partners of Aldecoa and Company in favor of William Urquhart as liquidator of
560 said firm he has not been given that of incumbering, mortgaging, or pledging, during the pendency of the liquidation, any property of the concern in favor of a particular creditor.

3. That the credit of the Hongkong and Shanghai Banking Corporation which has been secured with the mortgage of several shares of stock of the Pasay Estate Company limited by a document executed by said liquidator on August 30, 1907, was not nor is at present a credit due and payable; and

4. That the Code of Commerce does not provide as one of the powers inherent to the office of liquidator of a mercantile partnership, that of incumbering the property of the partnership to secure the payment of a particular debt of the partnership in favor of any of its creditors, but on the contrary he is forbidden to enter into any transaction or compromise over the interests of the partnership, unless the partners should have expressly conferred those powers upon him.

The defendant on the other hand holds that the contract executed by Wm. Urquhart mortgaged in favor of the Hongkong Bank the said shares of the Pasay Estate Company, Limited, owned by Aldecoa and Company to secure the credit of said Bank, and by virtue whereof delivered the certificates of said shares of stock for their

561 custody and preservation to the representative of said Bank, was and is a perfectly valid contract. To this effect the defendant alleged in its answer and in the written argument

submitted to the court, that Wm. Urquhart was authorized according to the minutes signed by the partners of the Company at their meeting on January 24, 1907, to sell all kinds of personal property and business of the concern and to adjudicate in payment of debts properties, rights and actions of the partnership in liquidation and that therefore it should also be considered that he had power to encumber said property because the power to sell is larger and of more importance than that of merely incumbering said property that furthermore, both Doña Isabel Palet y Gabarro and these plain-

tiffs Joaquin and Zoilo Ibañez de Aldecoa were parties to the execution of document Exhibit "B" of the defendant, whereby it was agreed that the proceeds of the litigation which Aldecoa and Company was about to commence against D. Alejandro S. Macleod over several shares of the company known as the Pasay Estate Company, Limited, would be delivered to the Hongkong and Shanghai Banking Corporation to be applied to the satisfaction pro tanto of its credit against Aldecoa and Company in consideration of the bond for the sum of P50,000 which said banking corporation obligated

562 itself to furnish in order to obtain an injunction to prevent the alienation of said shares of stock: that Zoilo Ibañez de Aldecoa had been from the year 1903 legally and duly emancipated by his mother Da. Isabel Palet y Gabarro and by virtue of said emancipation Zoilo had on the 13th day of June 1907 full capacity to manage his property as if he were of lawful age: that plaintiffs herein, Joaquin and Zoilo Ibañez de Aldecoa had furthermore, together with the attorney in fact of their mother Doña Isabel Palet y Gabarro, executed a public instrument in favor of the Hongkong and Shanghai Banking Corporation whereby they mortgaged to said Bank the shares of interest which they had in several city properties in order to secure the credit in account current which said Bank had opened in favor of Aldecoa and Company up to the sum of four hundred and seventy five thousand pesos (P475,000.00) Philippine currency. To this effect defendant offered in evidence the said mortgage contract executed by Joaquin and Zoilo Ibañez de Aldecoa on the 23rd day of February, 1906, in favor of the Hongkong and Shanghai Banking Corporation and the two powers of attorney executed on April 17, 1907, in favor of Jesus Jose Maria Ibañez de Aldecoa the first of said powers of attorney being granted by Doña Isabel Palet on her own behalf and on behalf of her minor child Doña Cecilia Ibañez de Aldecoa, and the other substituting and transferring in favor of said Jesus Jose Maria Ibañez de Aldecoa all the express and ample power executed in her favor by her children Joaquin Ibañez de Aldecoa, 21 years of age, and Zoilo Ibañez de Aldecoa, 20 years of age, who alleged to be emancipated by voluntary concession of their said mother, the last power of attorney referred to having been executed by Zoilo and Joaquin on the 24th of October, 1905. The authenticity of all these documents is not questioned, nor that of the other documents filed by the parties, and that therefore, we must abide by the content of the same.

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Now then, Art. 227 of the Code of Commerce establishes that "In the liquidation and division of the common capital the rules established in the articles of association shall be observed, and should there be none, the rules contained in the following articles."

Neither plaintiffs nor defendant have offered in evidence the articles of partnership of the firm of Aldecoa and Company so as to know what were the rules established therein for the liquidation and distribution of its assets, and therefore, we must apply in this case the rules established by Articles 228 et seq.

Said article 228 provides that "From the time an association is declared in liquidation the representation of the managing members to make new contracts and obligations shall cease, their powers being limited as liquidators to collecting the credits of the association, to extinguishing the obligations previously contracted as they fall due, and to realizing pending transactions."

According to Article 229 "In general as limited co-partnerships should there be no opposition on the part of any of the partners, the persons who managed the common funds shall continue in charge of the liquidation; but should all the partners not agree thereto, a general meeting shall be called without delay, and the decision adopted at the same shall be enforced with regard to the appointment of liquidator from among the members of the association or not, as well as in all that refers to the form and proceedings of the liquidation and management of the common funds."

And article 231 provides that "The liquidation shall be liable to the members for any loss suffered by the common funds on account of fraud or serious negligence in the discharge of their duty, but are not understood thereby as being authorized to transact business nor to compromise the common interests unless the members have expressly granted them these privileges.

We have then that in accordance with these provisions of the Law, the liquidator of a mercantile partnership, even when he has been the manager of the firm, lacks any power to make new contracts and obligations or to enter into a compromise over the interests of the concern, unless this power has been granted him expressly by the partners and his powers are limited to collect the credits of the Company, to extinguish the outstanding obligations, as they become due, and to carry out the negotiations pending. The jurisprudence of the supreme court of Spain, in accordance with those provisions of the Law, has settled a uniform rule in this sense in its judgment of July 4, 1874, December 28, 1877, May 27, 1884, October 12, 1888, and by judgment of November 10, 1897, it has established the rule that the liquidator cannot even make insurance contract, nor renew those existing prior to the liquidation. This Court is therefore of the opinion that the forced conclusion that in view of those legal provisions the contract executed by Wm. Urquhart on August 30, 1907, whereby he mortgaged the shares of stock of the Passay Estate Company, limited, in favor of the defendant concern is null and void and has no legal effect. It would be idle to show that that contract, even as an accessory contract, is a new contract executed by said liquidator, its object being not to pay or extinguish a credit which by the way was not due and payable

as yet, but to better its legal condition securing it with the valuable security of shares of stock worth one hundred sixty thousand pesos (P160,000). It would, therefore, be necessary to look into the original powers expressly conferred by the partners of Aldecoa and Company, for that Wm. Urquhart claimed to have when he executed that mortgage contract in favor of the Bank. He had the power, certainly, to sell the real and personal property of Aldecoa and Company and to cede them in payment of debts of said Com-

pany and it is argued that one who has power to sell certain and definite property and to assign the same in payment of debts, has also the power to give them in pledge or in mortgage. * * * But the Court understands that although as a general rule this question should be decided in the affirmative, it must not be interpreted so absolutely that it should warrant necessarily the conclusion that, therefore, Wm. Urquhart was expressly authorized by the partners to mortgage the said shares of the Pasay Estate Company, Limited, in favor of the Hongkong Bank. It must be noted that a partnership in liquidation is a partnership dissolved by Law, and being in such conditions the exercise of its powers is limited essentially to perceive the credits of the Company, to extinguish the obligations before-

hand contracted as they become due and to carry out and bring
567 to a final determination the negotiations pending in order

to come to the real end which is the distribution of the assets between the partners. It is true that in the Act of February 24, 1907, it appears that the partners of Aldecoa and Company at a meeting held on said date, authorized the liquidator Wm. Urquhart to sell the property of the Company and to cede it in payment to its creditor, as aforesaid, but this power must be understood in my opinion as granted subject necessarily to the legal status of the partnership at that time which was that of a real and formal liquidation; and that, therefore, if Wm. Urquhart could make those sales or cede the property of Aldecoa and Company in payment of its debt to its creditor, he could not act wantonly making those sales or payments to creditors whose credits were not yet due and giving them preference to others: to suppose that he could act otherwise, it would be to give the liquidator authority to execute some acts which might at his pleasure ruin or defraud other creditors of the Company whose credits were already due and payable at once and at any time, as for instance, the credit which this plaintiff has against said partnership, and to favor with partiality one single creditor whose credit would only become due and payable four years later, as in the case of the credit of the Hongkong Bank, to secure which he mortgaged

568 the certificates of stock of the Pasay Estate Company, Limited, which as it can be deduced from the results of the execution proceedings — carry out the judgment rendered in case 6081 was the only if not the greater part of the property belonging to Aldecoa and Company which still remained its own. That this is the interpretation which might be given to the power granted by the partners of Aldecoa and Company according to the act of January 24, 1907, is clearly shown in my opinion, by the very acts executed by Wm. Urquhart and the Hongkong Bank; because if they have understood that the power which Wm. Urquhart had to sell any property of Aldecoa and Company or to cede it in payment of debts, necessarily involved the power to simply mortgage or pledge that property to secure the credit of the Hongkong Bank which does not become due and payable until February 24, 1911, what interest and what need had Wm. Urquhart to ask for the personal concurrence and consent of the attorney in fact of Doña Isabel Palet y Gabarro and Don Zoilo Ibañez de Aldecoa, and for the personal concurrence and consent of

Joaquin Ibañez de Aldecoa to execute the agreement of June 13, 1906, defendant's Exhibit B? This agreement discloses in my judgment the purpose sought thereby, which was that of filling *it* the lack of power on the part of Wm. Urquhart to execute that com-
 569 promise, with the consent of the persons above named. What need, then, had he to ask for the consent of Doña Isabel Palet for herself and on behalf of her son Zoilo Ibañez de Aldecoa, *nor* for the personal consent and concurrence of Joaquin Ibañez de Aldecoa, if as it is held by the defendant Wm. Urquhart as liquidator was already expressly authorized beforehand by the partners of Aldecoa and Company by virtue of the aforesaid Act of January 24, 1907, to constitute the mortgage or pledge of the shares of the Pasay Estate Company, Limited, as a power necessarily and legally included in that which he has to sell all the property of Aldecoa and Company or cede it in payment to its creditor, if said power to sell and cede in payment said property were not to be understood necessarily subject to the fundamental principle *underlined* the powers and duties of the liquidator in so far as said powers and said duties are subject to and tend to the end sought by all liquidations? * * * The supplementing, however, of that power which, as we have said, Wm. Urquhart lacked to mortgage as he did those shares of stock, is also, in my judgment, null and void for the purpose of confirming the act executed by Wm. Urquhart to the exclusive benefit of the Bank; in the first place because the power and consent given to Wm. Urquhart by the attorney in fact of Doña Isabel Palet and of Zoilo
 570 Ibañez and by Joaquin Ibañez rests on a false hypothesis that Joaquin and Zoilo Ibañez de Aldecoa were partners of Aldecoa and Company, since only under that hypothesis could they have concurred in the execution of that agreement: in the second place, because neither Doña Isabel Palet nor Zoilo Nor Joaquin Ibañez de Aldecoa, granting that the latter two were partners of Aldecoa and Company, could, in my opinion, execute separately and singly that agreement without having first submitted it to a general meeting of the partners of the firm; because if after a partnership has been dissolved, and once it has gone into liquidation, not even the managing partners of the firm can separately make new contracts and undertake new obligations not withstanding the fact that one moment before the partnership went into liquidation they have the full and legal representation of the partnership, it is obvious to infer that no other partners can by themselves and for themselves alone and separately grant new powers to a liquidator, if it had not been first agreed upon by the general meeting of the partners. It does not matter, to come to this conclusion that that contract has been executed in consideration of the bond for fifty thousand pesos (P50,000) which the Hongkong Bank was too and did furnish so as to secure the granting of the petition for an injunction in
 571 the case which was going to be filed against Alejandro S. Macleod to prevent the alienation of said shares of stock of the Pasay Estate Company, Limited, because if Wm. Urquhart had no power to mortgage or pledge those shares of stock in favor of the Hongkong Bank, once Aldecoa and Company would have been sue-

cessful, the legal conclusion would be always the same, that is to say, it would always come to the conclusion that the mortgage deed in favor of the Hongkong and Shanghai Bank (such as the document executed by Wm. Urquhart on January 30, 1907, in favor of the said Bank) is a contract null and void, even prescindendo to consider whether or not Wm. Urquhart on executing that mortgage contract went beyond the terms in which he was given authority to apply those shares of stock if a favorable judgment were secured for the satisfaction pro tanto of the credit which the firm of Aldecoa and Company owed the Hongkong Bank. In said place because in so far as Zoilo Ibañez de Aldecoa is concerned it is a fact that when the said agreement of June 13, 1907, was executed by his attorney in fact J. M. Y. de Aldecoa, he was under 23 years of age, and although he was really emancipated that emancipation did not enable him to mortgage or pledge his property without his guardian duly appointed by the Court being first authorized

572 therefor. Article 370 of the Civil Code which only requires for the validity of the acts executed by an emancipated minor the consent of his father or his mother presupposes the subsistence of the parental authority of the father or the mother in regard to the person and the property of the minor, in concordance with the provisions of articles 154 and 159 of said Code; but article 159 which refers to the power which parents have to administrate the property of their children who are under their parental authority has been expressly repealed. By article 553 of the Code of Civil Procedure Act No. 190 which provides that the Court has the exclusive jurisdiction to appoint the guardian of the property of a minor. Article 575 of said Act No. 190, provides also that even when a minor contracts marriage—which act according to article 314 of the Civil Code is one of the three cases whereby a minor may be emancipated,—the guardianship over his property does not cease although the guardianship over the person of the minor may be at an end. There is, furthermore, another strong reason which renders null and void the authority given through a power of attorney by Doña Isabel Palet for her son Zoilo Ibañez to mortgage and pledge his property in favor of the Hongkong Bank in order to secure a debt of Aldecoa and Company. Doña Isabel Palet was and is a partner of the general mercantile partnership of Aldecoa and

573 Company and as such she is an interested party in the contract for which she gave authority to her son Zoilo; there is, therefore, between her and her son Zoilo a real and marked conflict of interest which prevents her legally to give such authority, even granting, for the sake of argument, that Zoilo and Joaquin Ibañez were really partners of said firm. By such permission she gives facilities and favors the occasion and makes her children to dispossess themselves of their property or give it as security for certain obligations which were not theirs, in order to derive a benefit for herself and her other partners, relieving herself of the greater part of the weight which should be her own and place it on the shoulders of her sons, who, without the protection and the advice of a protector or a

guardian, executed an act without the full knowledge—which is supposed in one of age—of its necessity and utility. Such an authority could not be given by Da. Isabel Palet, and that which she gave is manifestly null and void.

It may be argued that the partners of Aldecoa and Company authorized Wm. Urquhart to ask for the help of the Hongkong and Shanghai Bank and to obtain from the same money on loan; that is true; but it was for the payment of other debts and for the upkeep of the liquidation but not to further secure with the property of Aldecoa the debt already existing from Aldecoa and Company to said Bank on the day in which Aldecoa and Company was declared in liquidation. It will also be said that William Urquhart was authorized by the partners to represent the liquidation before the courts as plaintiff or defendant, bringing all actions which he might deem convenient and do all acts necessary for the substantiation and definite determination of the matters in which he

574 should intervene, this is also true; but that general power has and can have no other legal effect but that of a general power to sue and does not mean and much less does it authorize him to execute a mortgage in favor of a certain individual creditor on the property, or rights which Aldecoa and Company might have or become possessed or as a result of the actions instituted by virtue of said power, according to article 1713 of the Civil Code express power is needed to sell, mortgage or to execute any act bearing on strict rights of property.

That agreement of June 30, 1907, reveals, at any rate, the violation of the contract executed in the month of February 1907, by the firm of Aldecoa and Company whereby Doña Isabel Palet, in the name of the plaintiffs in this case deposited with said firm the important sum of P204,184.74 Philippine currency belonging to said plaintiffs, of which amount, the sum of P155,127.31 was the subject matter, as already stated, of the execution proceedings followed by these plaintiffs against Aldecoa and Company in liquidation in case No. 1087 of this court. For it is a proved fact which has not been denied or questioned by the defendant,—in spite of the fact that this defendant objected to the admission in evidence of the record of said civil case No. 6087, and especially of the judgment rendered in the said case, which the court admits as such evidence,—that said deposit was made as if it had been by virtue of public instrument and with preferential character and on the express condition that Aldecoa and Company should bind itself as it did not to execute any document of credit nor to enter into any obligation that should have preference over the one just referred to, without previously obtaining the personal consent of Doña Isabel Palet. It cannot be supposed that the liquidator, William

575 Urquhart should be ignorant of the fact that said deposit was made on these terms and conditions, nor is it a fact alleged by defendant that said defendant should be ignorant of this fact. It is therefore evident, that William Urquhart could not validly mortgage or pledge said shares of the Pasay Estate Company Ltd. to secure the credit of the Hongkong and Shanghai

Banking Corporation,—which, by the way, had not fallen due,—without openly violating that agreement even should he have obtained the consent of the members of Aldecoa and Company, because they could not either as individuals or collectively violate said agreement. Further still: not even counting with the consent of Doña Isabel Palet y Gabarro could the liquidator encumber said shares of stock bettering or making preferent thereby the credit of the Hongkong Bank, for the simple reason that, as it has already been said, Doña Isabel Palet, not even as mother with or without parental authority over her children, the plaintiffs in this case, could validly give such authority in view of the opposition and manifest conflict existing between her own interest and those of her children in the firm of Aldecoa and Company, of which she was and is at present a member and therefore liable even with her individual property for the debts of the partnership.

In regard to the adjudication of ownership as to the shares of the Pasay Estate Company Limited, prayed for in paragraph 2 of the complaint, the court understands that it is wholly unnecessary to pass upon this question in this case, inasmuch as it has already been settled in the deed of compromise executed by and between William Urquhart as liquidator and Alexander S. Macleod, with the consent of the Hongkong Bank, who does not even question

576 this fact in this case, taking it so much for granted that its opposition to the complaint relies precisely on the hypothesis that the shares of the Pasay Estate Company Limited are the property of Aldecoa and Company.

Wherefore, the agreement executed by William Urquhart, as liquidator of Aldecoa and Company on June 30, 1907 whereby a mortgage as it is therein called was given as additional security for the credit of the Hongkong and Shanghai Banking Corporation against Aldecoa and Company on the shares of the Pasay Estate Company, Limited, declared and acknowledged to be the property of said firm by virtue of the agreement of compromise executed by Alexander S. Macleod, on August 14, 1907, the certificates of which were delivered to said Bank for the custody and preservation of the same, is hereby declared null and void, and it is hereby ordered that said Bank deliver such certificates to the Sheriff of Manila as property of Aldecoa and Company in liquidation subject to execution, and without prejudice to the preferential right which the parties might allege over said property on grounds or motives different from those which have been the subject matter of the present litigation; without any special finding as to costs.

So ordered.

Manila, August 31, 1910.

(Sgd.)

ESTANISLAO YUSAY, *Judge*.

14.

On September 2, 1910, the defendant, the Hongkong and Shanghai Banking Corporation, filed the following exception against the foregoing decision.

(Heading and Title of the Case.)

Now comes the defendant, the Hongkong and Shanghai Banking Corporation by its counsel and excepts to the decision of this court in the above entitled case dated August 31, 1910 and asks that this exception be duly registered in the registry of this court.

Manila, September 1st, 1910.

HAUSSERMANN, COHN &
FISHER,

(Sgd.) p. p. CHARLES C. COHN,
*Attorneys for the Defendant The Hongkong
and Shanghai Banking Corporation.*

15.

On the same date, September 2, 1910, the same defendant filed the following motion for a new trial.

(Heading and Title of the Case.)

Now comes the defendant, the Hongkong and Shanghai Banking Corporation in the above entitled case, and asks this court to vacate and set aside the decision rendered in this case on August 3, 1910 and to order a new trial on the following reasons:

1. Because the evidence does not sufficiently support the decision of this court.
2. Because said decision is contrary to law.
3. Because the findings of fact in said decision are openly and manifestly against the weight of the evidence.

Manila, P. I., September 1910.

HAUSSERMANN, COHN & FISHER,

(Sgd.) p. p. CHARLES C. COHN,
Attorneys for the Defendant.

After the hearing of the motion for a new trial, the Honorable Estanislao Yusay, Judge of the Court of First Instance of Manila, on October 1, 1910, rendered the following order:

(Heading and Title of the Case.)

After hearing the motion for a new trial and after having carefully examined the reasons alleged therein, in connection with the findings and conclusions of the decision rendered by this court which is the object of said motion for a new trial, I find no reasons to authorize the granting of the new trial, asked for.

There was a point worthy of attention raised by counsel for the Hongkong and Shanghai Banking Corporation in his oral argument in regard to the fact that it cannot be strictly said that the credit of said bank against Aldecoa and Company was not due,

because some of the installments had already become due and payable at the time Mr. Urquhart executed the mortgage of the shares of the Pasay Estate Company Limited, in favor of said bank; this observation although in a way justified by the deed executed on February 23, 1906 by Don Joaquin and Don Zoilo Ibañez de Aldecoa and by Don Fernando Zobel as representative of Doña Isabel Palet y Gabarro in favor of said Bank is not in the opinion of this court a sufficient legal reason to give full force and effect to the contract executed by William Urquhart on August 30, 1907 Aldecoa and Company still had the full credit of P475,000.00 in the Hongkong Bank up to December 31, 1906 and was under no obligation to reduce that credit, except in the sum of P50,-
579 000.00 per year—the first installment becoming due on the 31 day of December 1906,—on the express condition however that even if Aldecoa and Company should enter into a period of liquidation the Bank could not as for the foreclosure of the mortgage in order to wholly pay itself with the proceeds of the sale of all that Aldecoa and Company might owe until after the five years fixed for the whole payment of the credit should have elapsed.

So that, in accordance with the conditions stipulated in said agreement of February 23, 1906, the Hongkong Bank had no right to demand from Aldecoa and Company but the payment of the sum of P50,000.00 on account of said credit when the liquidator Mr. Urquhart on August 30, 1907, executed in favor of said Bank the mortgage of the shares of the Pasay Estate Company Limited belonging to Aldecoa and Company, that mortgage was not, indeed, to secure the payment of those P50,000.00 which had become due, but as an additional mortgage for the security of the payment of the total amount of said credit. The evidence has shown that Aldecoa and Company already was indebted to the Bank in almost the total amount of that sum of P475,000.00 not only on the 30 day of August, 1907, when the liquidator Mr. Urquhart executed the mortgage of said shares of the Pasay Estate Company Limited, but even when the so often mentioned deed of February 23, was executed.

In the second place because Mr. Urquhart, as liquidator, was not, in the opinion of this court empowered to dispose of said shares of the Pasay Estate Company Limited, in the way he did, executing a mortgage in favor of the Hongkong Bank and giving, by virtue thereof, to said Bank a preferential right over said shares thus manifestly violating the contract executed by Aldecoa and Com-
580 pany with Doña Isabel Gabarro, by virtue of which, said firm undertook the obligation to protect the credit of the children of said lady, the plaintiffs herein, consisting in a large amount of money deposited with said firm on consideration of the promise on the part of said firm not to constitute any other incumbrance on the property of said firm in favor of any other creditor which should give it preference over the said credit of the children of Isabel Palet y Gabarro.

By virtue of this reasons and those already given in the decision

rendered by this court and which is upheld hereby, the motion for a new trial is overruled.

Manila, December 1, 1910.

ESTANISLAO YUSAY, *Judge*.

17.

Against the foregoing resolution the defendant Hongkong and Shanghai Banking Corporation, on December 2, 1910, filed the following exception.

(Heading and Title of the Case.)

Now comes the defendant Hongkong and Shanghai Banking Corporation through its attorney- and excepts to the resolution of this court dated December 1, 1910, overruling the motion for a new trial filed by this counsel in this case, notice is also given of its intention to file a bill of exceptions and to appeal the case to the supreme court of these Islands.

Manila, P. I., December 2, 1910.

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HAUSSERMANN, COHN &
FISHER,

(Sgd.)

p. p. CHARLES C. COHN,

*Attorney- for the Defendant Hongkong and
Shanghai Banking Corporation.*

18.

The defendant Hongkong and Shanghai Banking Corporation makes reference to all the evidence written and oral presented and introduced at the hearing of this case and makes the same an integrant part of this bill of exceptions.

Manila, P. I., December 8, 1910.

HAUSSERMANN, COHN &
FISHER,

(Sgd.)

p. p. CHARLES C. COHN,

*Attorney- for the Defendant Hongkong and
Shanghai Banking Corporation.*

Received copy December 1910.

For Sanz and Opisso, Attorneys for the plaintiff,

CHICOTE AND MIRANDA,

Attorney- for Aldecoa and Company, in Liquidation.

UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Judicial District of Manila.

No. 7453.

ZOILLO IBAÑEZ DE ALDECOA et al., Plaintiffs,

versus

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Defendant.

After having examined the bill of exceptions filed by counsel for the defendant the Hongkong and Shanghai Banking Corporation, the same is hereby approved and certified and let the same be sent to the supreme court together with the documentary and oral evidence adduced at the trial of this case.

Manila, December 29, 1910.

YUSAY, *Judge.*

This 29 day of December 1910, the parties were notified of the foregoing resolution.

E. V. FILAMOR.

I, Jose McMicking clerk of the court of the first instance of the city of Manila, hereby certify that the foregoing bill of exceptions composed of 87 pages is the original of a bill of exceptions filed by the excepting party and approved by this court.

In witness whereof, I sign these presents in Manila, this 25, day of January, 1911.

J. McMICKING, *Clerk.*

Supreme Court of the Philippine — Clerk's Office. Filed January 26, 1911. 9:15 a. m. J. E. Blanco, Clerk.

Be it known that in this — day of — 1910, three copies of this bill of exceptions were sent by registered mail to each one of the attorneys in this case.

J. E. BLANCO,

Clerk Supreme Court of the P. I.,

By — BLANCO,

Deputy.

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DEFENDANTS' EXHIBIT "4."

Exhibit "4" of the defendant- being the Bill of Exceptions in case R. G. No. 6889 entitled Joaquin Ibañez de Aldecoa y Palet et al. plaintiffs, vs. The Hongkong and Shanghai Banking Corporation, et al. defendants, which is also pending on appeal before this Hon. Court, is by mutual consent of the parties, omitted from this record.

DEFENDANTS' EXHIBIT 5.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Court of First Instance of Manila.

Civil. No. 6088.

JOAQUIN IBANEZ DE ALDECOA et al., Plaintiffs,

VS.

ALDECOA AND COMPANY, in Liquidation, et al., Defendants.

Partial Nullity of the Partnership Contract of Aldecoa and Company.

Decision.

This case has been brought for decision on the face of the pleadings and a stipulation on the facts agreed upon by the parties.

The action brought by the complaint is an action for the nullity of certain contracts and other acts subsequent to it. Plaintiffs claim to be excluded from a certain general mercantile partnership (sociedad mercantil regular colectiva) called "Aldecoa and Company" of this City in which they were included as industrial partners and actually appear as such at the present time in the articles of partnership, and they ask that said articles of partnership and any other contract which in consideration and in consequence of the inclusion of the plaintiffs in said contract of partnership should have been executed, be, in whatever they may affect them or their rights and interests, declared null and void and without any effect.

The above named firm of Aldecoa and Company and those persons who lately appeared as partners in the same, have been made parties defendant; but, from the stipulation of facts, there appears that defendants Alexander S. Macleod, Cecilio Tremoya and, it seems, also Josefa Tremoya, had already withdrawn from the firm and were no longer members thereof at the time this suit was brought.

The facts in which plaintiffs' action is based and which are taken as proved at the trial, are the following:

1st. That on December 31st, 1896, defendant Isabel Palet y Garro, being the widow of Don Zoilo Ibanez de Aldecoa, and mother of the plaintiffs herein, Joaquin, Zoilo and Cecilia, surnamed Ibanez de Aldecoa, acting in her own interest and pretending to have power to contract in the name and on behalf of her three above named legitimate children, who were then minors and were not emancipated, Joaquin being 12 years, Zoilo 11 years and Cecilia, 9 years old, executed and signed in her own name, as well as in the name of her three named children, a contract of general partnership (sociedad mercantil regular colectiva) ratified before the Notary Public of the

City of Manila Don Enrique Barrera, by virtue of which the firm of Aldecoa and Company was organized, she being included
 586 in said partnership as one of the largest shareholders thereof, and her three children, plaintiffs herein, as industrial partner, with a right to share in common with five per cent on the net profits of the partnership's business, but without being obliged to lend their services to or to work for said partnership, being, furthermore, authorized to live wherever they chose.

2nd. That plaintiffs were then, as they are still now, owners of a large amount of real and personal property situated in the Philippine Islands, residing in the City of Manila under the guardianship and parental authority of their mother, Doña Isabel Palet y Gabarro widow of Aldecoa, and in the execution and ratification of said contract of partnership they were made parties thereof without any other formality than the express statement of the will of their mother, in accordance with that of the other contracting parties, to make them "industrial" partners, and to execute in their name and on their behalf the said contract of partnership of Aldecoa and Company.

3rd. That after the execution of this contract, there were others executed, modifying it inasmuch as their object was to include new members or to exclude some of those who were original partners in said firm, the mother of plaintiffs being a party to said contracts, not only on her own right as shareholder and general partner of said firm, but also in the names and on behalf of plaintiffs who were made to appear as industrial partners thereof, said plaintiffs being minors and subject to the parental authority of the former.

587 4th. That plaintiffs Zoilo and Cecilia, were, at the time the complaint in this case was filed, still minors, being represented and defended by a guardian ad litem appointed by this Court as their request, and plaintiff Joaquin was at that time 23 years old, having reached that age only in the month of March, 1907.

The questions presented by plaintiffs' counsel and submitted to the decision of this Court are the following:—

1st. Granting that the contract of partnership above referred to should not be afflicted with any defect rendering it null and void in regard to these plaintiffs, would said plaintiffs, according to the terms and conditions of said contract, be considered members of Aldecoa and Company?

2nd. Is said contract valid and of any force in what it may affect or in regard to these plaintiffs?

A contract of partnership is one by which two or more persons obligate themselves to place in a common fund any money, property, industry or any of these things, in order to obtain some profit. (Code of Commerce, Sec. 116, Civil Code, Sec. 1665). From this, it follows that a person cannot be considered a partner in any civil or mercantile partnership if he has not contributed or bound himself to contribute with any money, property, industry or any of these things in order to obtain some profit. The writer on Civil Law, Mr. Goyena, commenting — this matter says:—

"* * * it is necessary that each partner shall place something in common, be it money or any other thing even his industry; the

share in the profits, without this requisite, shall be a donation, not a partnership."

588 In the present case, plaintiffs did not contribute or bind themselves to contribute with any money, property, industry or any equivalent thereof into the partnership of Aldecoa and Company, but they were reserved a share in the net profits of the partnership's business. This condition does not and cannot give them the legal status of partners, even if their names had been included in the contract of partnership and they were given the character of industrial partners. Between them and the other contracting parties there never existed, or does now exist any legal relation of partnership, and their names and personality should not, therefore, appear in the articles of partnership, and must be excluded from the same. It would be, by all means, anomalous to maintain it, when it cannot produce any effect whatever in regard to these plaintiffs. No contract can exist without the consent of the contracting parties, a definite object which may be the subject of the contract and the cause for the obligation which may be established (Civil Code, Art. 1261). In contract involving a valuable consideration the prestation or promise of a thing or service by the other party is understood as a consideration for each contracting party (Ibid. Art. 1274). Contracts without consideration or with an illicit one, have no effect whatsoever. (Ibid. Art. 1275.) In the contract of partnership it is quite clear that the consideration for the obligation of each partner is the contribution

589 by the other partners with their property or industry to a common fund in order to obtain some profit. In the present case plaintiffs did not contribute or bind themselves to contribute with anything whatever, with property or industry: therefore, the contract made with them lacks consideration, and it is in itself, as regards them null and void and without effect.

On the other hand, a general mercantile partnership (*sociedad regular mercantil colectiva*) is a contract in the execution of which and for the attainment of its ends, each one of the partners practically engages in trade. For the legal exercise of commerce certain conditions as to capacity are required which mercantile law does not recognize in those who are under 21 years of age, (Code of Commerce, Art. 4) except when it is to continue the commerce which their parents or the persons from whom the right is derived may have been engaged in which can, then may engage, in *ti* through a guardian. (Code of Commerce, Art. 5.) The present case was not the continuation of a business previously established by plaintiffs' predecessors, but the creation of a commercial venture in which it does not appear that there was any property involved, belonging to these plaintiffs as a share in the inheritance of their father Don Zoilo Ibañez de Aldecoa and which had before been devoted to the commercial traffic in which the partnership was to be engaged. At the time the contract of partnership of Aldecoa and Company was executed, plaintiffs were under 21 years of age and, therefore, they lacked legal capacity to engage in trade and to enter into mercantile contract, either by themselves or by their guardians, and such mercantile contract, executed on their behalf by their mother

590 Doña Isabel Palet, is afflicted with the defect of lack of consent, which necessarily must produce the inefficacy and nullity of the contract in regard to the plaintiffs (Civil Code, Arts. 1278, 1261, 1263) just as if said contract had never existed for or been executed by these plaintiffs at any time.

The same conclusion would be reached if we should consider the question under the hypothesis that a person under 21 years of age could through a guardian, engage in trade or form a partnership with others to engage in trade or for a definite mercantile transaction under the form of a general mercantile partnership, continuing the business in which their predecessors had been engaged. Art. 5 of the Code of Commerce does not establish the manner in which its provisions may be carried into effect: but article 50 of the same Code provides that whatever is not expressly established in said Code or in special laws, in regard to the requisites, modification, exceptions, interpretation, extinction and to the capacity of the contracting parties, mercantile contracts must be governed by the general rules of the common law: and in the Explanation of Motives for the Reformation of the Code of Commerce it was stated with reference to Art. 5th that: * * * "notwithstanding, the previous proper declaration of the profits the minor or incapacitated person may derive by reason of continuing said commerce must be made, which shall be issued by the judicial authority, after the proceedings mentioned in the law of Civil Procedure." The exercise of Commerce necessarily involves the disposal or encumbering of property or the exposing of it to the risk of the results of mercantile transactions, and creates obligations which are beyond the character of those which fall strictly under the provisions of the Civil

591 Law. In a mercantile partnership, the contributions of the partners are in fact transfers in favor of the partnership, and when such partnership is a general one (*sociedad colectiva*) all the rest of the private property of the partners is liable for the result of the mercantile transactions of the partnership. In all cases of transfer or encumbrance of property belonging to minors, or of execution of contracts affecting property belonging to them or which are subject to registration, the Civil Code requires that the necessity or utility of said act or contract which it is desired to execute be first shown and the necessary authorization given therefor. (Civil Code, Arts. 164, 269 numbers 4 and 5, and 270 and old law of Civil Procedure Art. 1970.) The act and the contract executed by the defendant Isabel Palet on behalf of the plaintiffs has not filled all *there* requisites, and therefore it may and must be declared null and void.

On the other hand, it is a fact that defendant Da. Isabel Palet was an interested party in that contract and that, furthermore, there was a conflict between her and her children's interests. The first circumstance determines the legal incompatibility between the mother and her children to contract between themselves and this circumstance together with the other determine, in consequence, the lack of capacity in these plaintiffs to execute that contract. At the time of the execution of the contract, Isabel Palet was invested with

the right of parental authority and therefore legally represented her children in all civil acts: but in the present case the representation of plaintiffs should have been given to a special guardian appointed for that purpose, on account of there being a conflict of interest between the mother and her children in the contract (Civil Code, Art. 165), the mother lacking authority to represent them in this case.

Parental authority is, besides, in its practical aspect, a legal mandate the purpose of which is to supply the lack of civil or juridical capacity, by creating a civil or juridical capacity and transforming the real absence of an incapacitated person into his juridical presence. A mandate cannot be made use of to contract with the same person of the principal, on account of the legal unity of the person, which makes it legally impossible for any contract to exist, since it is required that there be a meeting of two minds, free and judicially capable: "no one can contract with himself."

"They are incapable to contract with one another by reason of the civil relation existing between the contracting parties * * * the son who is under the parental authority of his father or his mother, with any of these, on account of there being unity of persons, except in some cases in which, by reason of incompatibility of interest between parents and children and by necessity, a contract may be executed through the intervention of a third party acting as guardian or representative of the minors, according to the provisions of the law * * *" (Sanchez Roman, *Studies in Civil Law*, Vol. 4, page 181.)

Plaintiffs were not then legally and properly represented in the execution of the contract of partnership of Aldecoa and Company and of the other contracts modifying it, and such contracts, in regard to them, have no legal effect.

Wherefore, The Court finds, adjudges and decrees that the contract of general mercantile partnership (*sociedad mercantil regular colectiva*) executed by Doña Isabel Palet y Gebarro widow of Aldecoa on December 31st 1898, by virtue of a public instrument ratified before the Notary Public of Manila, Don Enrique Barrera y Aldecoa, in her own right, and in the name and on behalf of her children, plaintiffs Joaquin, Zoilo and Cecilia Ibañez de Aldecoa, and all other contracts executed thereafter in consequence of or modifying that contract, be and are hereby declared null and void and without any legal effect; in regard to these plaintiffs, that said plaintiffs are not, and have at no time been partners in the firm of Aldecoa and Company; and that said plaintiffs are and remain hereby excluded from said firm of Aldecoa and Company as members of or interested parties in said firm.

Let notice of this decision be given to the Mercantile Registry for the due registration thereof.

No express decision as to costs is given.

So ordered, adjudged and decreed.

Manila, P. I. — of September, 1908.

(Sgd.)

CHARLES S. LOBINGIER, *Judge*.

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EXH. X-1.

8519.

Telegram.

January 4, 1907.

Widow & Sons of Escano, Malitbog:

Your debt to Aldecoa & Company is mortgaged to this Bank, where all payments must be made.

HONGKONG BANK.

MANILA, January 4, 1907.

Widow & Sons of Escano, Malitbog.

SIRS: We take the liberty to notify you that the sum of P— which you owe to the firm of Aldecoa & Company was assigned to this Bank on December 31st, 1906, of which please take notice.

You shall oblige us by settling up the liquidation of your debt with the liquidator authorized by said firm at your earliest convenience. Please acknowledge receipt hereof.

(Sgd.)

A. G. STEPHEN, *Manager.*

Copy 454.

MANILA, August 16, 1907.

Widow of Escano, Malitbog.

MADAM: I notify you that your debt for P45,000 to Messrs. Aldecoa & Company has been transferred to this Bank by Dona Mercedes Macleod and Messrs. Aldecoa & Company in liquidation for which reason I notify you that I shall request you to pay that debt to me.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

MANILA, December 14, 1907.

Widow & Sons of Escano, Malitbog.

SIRS: We take pleasure to notify you that your annual payment of P12,000 twelve thousand pesos Philippine Durrency plus interest becomes due on December 31st, 1907 and shall be obliged to you for sending said sum at your earliest opportunity as per agreement.

Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

Per S. S. Carmen.

MALITBOG, December 25, 1907.

The Manager of the Hongkong & Shanghai Banking Corporation,
Manila.

DEAR SIR: Yours of the 14th instant at hand wherein you demand from us payment of the sum of P12,000 as per our agreement with

that Corporation, being due on the 31st instant according to said agreement.

In deference to this agreement and complying with your desires we have on this date ordered Messrs. Macleod & Company of that City to pay that amount to you.

We are,

Yours very truly,
(Sgd.)

WIDOW & SONS OF ESCANO.

EXH. X-2.

8519.

Telegram.

January 4, 1907.

Acordagoicoechea & Sons, Oroquieta:

Your debt to Aldecoa & Company has been mortgaged to this Bank to whom all payments are to be made.

HONGKONG BANK.

MANILA, January 4, 1907.

Messrs. Acordagoicoechea & Sons, Oroquieta.

DEAR SIR: We take the liberty to notify you that the sum of P— which you owe to the firm of Aldecoa & Company on December 31st 1906, has been assigned to this bank, of which please take notice.

You shall oblige us by settling up the liquidation of your debt with the liquidator authorized by said firm at your earliest convenience.

Please acknowledge receipt hereof.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

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MANILA, June 13, 1907.

Mr. Juan Acordagoicoechea, Oroquieta, Mindanao.

SIR: We have to remind you that according to your contract with this bank entered into on 27th of February last the first quarterly payment of P3,000 became due on May 31st last, and we have not received yet any remission.

You shall oblige us by sending us that sum without loss of time.

Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

EXH. X-3.

8519.

Telegram.

January 4, 1907.

Mr. Francisco Rodriguez, Daet:

Your debt to Aldecoa & Company is mortgaged to this Bank where all payments must be made.

HONGKONG BANK.

MANILA, February 20, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: In answer to your letter of the 14th instant we believe that the arrangement proposed by you for the settlement of your debt to Messrs. Aldecoa & Company for the sum of P1,500 598 per year is unsatisfactory and although we accept it for the present we expect that you shall soon find your self in a position to increase the amount of payment.

We wait for the document which you propose to execute as security.

Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, February 4, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: We acknowledge receipt of your favor of January 29 finding correct the amount of your debt to Messrs. Aldecoa & Company for the sum of P9,700.51 which the liquidator also finds correct.

We also see that you are trying to establish relation with the firm to receive your hemp and pay that amount, but we understand that up to the present, you have failed, the two firms to which we understand you applied to, having refused to advance such sum.

Under *this* conditions we insist on the immediate payment of that amount or else that you shall continue to send to Aldecoa & Company your hemp and to come to an agreement as to a gradual payment of your debt.

599 We should accept a minimum payment of P500 per month and as security therefor we would accept the mortgage of your property in Daet.

This being a very urgent matter you shall oblige us by coming to a definite decision within the shortest time possible.

Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

January 4, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: We take the liberty to notify you that your debt to Aldecoa & Company for the sum of P— on December 31st has been assigned to this Bank, of which please take notice.

You shall oblige us by settling up the liquidation of your debt with the liquidator authorized by said firm at your earliest convenience.

Please acknowledge receipt hereof.

(Sgd.)

A. G. STEPHEN, *Manager*.

March 12, 1907.

Mr. Francisco Rodriguez, Daet.

SIR: Your letter of March 4th at hand, and I take pleasure 600 to notify you that your debt had been transferred to us and it is indifferent to us whether the amounts are paid to Aldecoa & Company or to us.

In regard to your other letter of March 5th I take pleasure to acknowledge receipt of P486 (Four hundred and eighty-six pesos Philippine currency) which were paid to us by Mr. Urquhart on your account. As we had given instructions to said gentleman to pay only P200 for the months of January and February, we shall apply the balance P286 to your monthly payments for March, April and May, there being a small balance of P14 for the month of May which I beg you to send in due time.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, July 15, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: We take pleasure to inform you that we have received from Mr. William Urquhart the sum of P114 on June 21st last of which sum we applied P14 to the small balance due in the month of May and P100 to your June instalment.

You shall oblige us by sending at your first opportunity
601 the sum of P100 for July payment as per agreement.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, August 9, 1907.

Mr. Francisco Rodriguez, Daet.

SIR: With reference to your favor of July 28 last I have the pleasure to inform you that I have received from Mr. William Urquhart the sum of P100 (One hundred pesos conant) in payment of your July instalment as per agreement.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, August 15, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: You shall oblige us by remitting us at your earliest opportunity the sum of P100 (one hundred pesos P. C.) for your August instalment as per agreement.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

602

MANILA, September 17, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: You shall oblige us by remitting us at your earliest opportunity the sum of P100 (one hundred pesos P. C.) for your September instalment as per agreement.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

October 2, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: We confirm our letter of September 17, and we take

pleasure to inform you that we have received from Messrs. Aldecoa & Company the sum of P100 (one hundred pesos P. C.) on your account for your instalment of September last.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

October 17, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: You shall oblige us by remitting us at your earliest opportunity the sum of P100 (one hundred pesos P. C.) for your October instalment as per agreement.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

November 15, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: You shall oblige us by remitting us at your earliest opportunity the sum of P100 (one hundred pesos P. C.), for your November instalment as per agreement.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

December 14, 1907.

Mr. Francisco Rodriguez, Daet.

DEAR SIR: You shall oblige us by remitting us at your earliest opportunity the sum of P400 (four hundred pesos P. C.) for your December instalment as per agreement.

Yours truly,
(Sgd.)

A. G. STEPHEN, *Manager.*

604 Per S. S. S. Nicolas.

DAET, July 28, 1907.

The Manager of the Hongkong Bank, Manila.

DEAR SIR: Your favor of the 15th instant at hand and contents noted.

On this date, I advised Mr. William Urquhart to pay on my account to that Bank the sum of P100 for my instalment of the present month as per agreement.

Yours truly,
(Sgd.)

FRANCISCO RODRIGUEZ.

Per S. S. S. Nicolas.

DAET, January 29, 1907.

The Manager of the Hongkong Bank, Manila.

DEAR SIR: This is to notify you that having received the abstract of my current account with Messrs. Aldecoa & Co. in liquidation closed on December 31st last, with a balance in their favor of P9,700.51 instead of the P9,451.51 which you advised me on your letter of the 4 instant, I find the same correct.

There is now *pendent* a claim for demijons of anisette lost in the former voyage of the S. S. S. Nicolas, amounting to P840, 36 6/., payment of which is to be sought by Messrs. Aldecoa & Company since they were the persons who shipped and insured said anisette, which amount shall decrease the balance of P9,700.51 as soon as it is collected.

At present I am trying to come to an understanding with a commercial house of that City to continue my business and to pay my debt to Messrs. Aldecoa & Company in liquidation or to that Bank.

I believe I shall find what I seek before long and as soon as I succeed we shall arrange the aforesaid payment.

Yours very truly,

(Sgd.)

FRANCISCO RODRIGUEZ.

EXH. X-4.

8519.

Telegram.

• January 4, 1907.

Mr. Salustiano Zubeldia, Tabaco:

Your debt to Aldecoa & Company has been mortgaged to this bank, where all the payments are to be made.

HONGKONG BANK.

TABACO, October 7, 1907.

Hongkong & Shanghai Banking Corporation, Manila.

GENTLEMEN: I acknowledge receipt of your favor of the 1st instant which I now have the pleasure to answer.

606 On September 25 last I sent you a draft for the sum of P3,000 for my quarterly instalment, agreed with Messrs. Warner Barnes & Company Ltd. by S. S. Cebu.

Likewise on that same date September 25 I answered your favor of the 20th of the same month in the P. S. on account of having received it late.

Without anything further, I beg to remain

Yours very truly,

(Sgd.)

SALUSTIANO ZUBELDIA.

P. S.—I have just sent you a telegram where in short I notify you to have sent you the draft by S. S. Cebu.

VALE.

Telegram.

TABACO, October 7, 1907.

Hongkong Bank, Manila:

Please tell if you received draft and letter of September 25.

(Sgd.)

ZUBELDIA.

TABACO, September 26, 1907.

Hongkong & Shanghai Banking Corporation, Manila.

GENTLEMEN: I send you herewith my quarterly payment for P3,000 in a draft at your order and against Messrs. Warner Barness & Company Ltd. for which acknowledge receipt to me.

Yours truly,
(Sgd.)

SALUSTIANO ZUBELDIA.

P. S.—By the carrier hereof S. S. Cebu I have just received your favor to which this refers.

VALE.

TABACO, June 25, 1907.

Hongkong & Shanghai Banking Corporation, Manila.

GENTLEMEN: I take pleasure to send herewith draft No. 729 for P3,000 against Messrs. Warner Barness & Company Ltd. for the 2nd quarter instalment of my contract in regard to the balance of my account with Messrs. Aldecoa & Company, which I expect you shall credit to my account.

Hoping that it will be so, I offer my services to you and I remain

Yours very sincerely,
(Sgd.)

S. ZUBELDIA.

TABACO, April 12, 1907.

Manager of Hongkong Bank, Manila.

DEAR SIR: It being very probable that the Railroad Company shall have to purchase my buildings and lot which they occupy and which are mortgaged to that bank I take the liberty to send you the enclosed Power-of-Attorney in order that you may execute the sale or lease without any difficulty when the time comes.

If the purchasers find the value of the mortgage dear you can fix the price, and notify me by cable if I find it convenient.

Yours respectfully,
(Sgd.)

S. ZUBELDIA.

By S. S. S. Juan.

TABACO, March 30, 1907.

Manager Hongkong Bank, Manila.

DEAR SIR: In compliance with our agreement I take pleasure to send you my first instalment of P3,000 in a draft No. 618 which I enclose herewith in your favor and against Messrs. Warner Barnes & Company Ltd.

Although my wishes were to send you a larger sum I have not been able to so far: it being a short time since I took charge of the drafts unpaid by Messrs. Aldecoa & Company amounting to P8,000 plus P10,000 which were not accepted and therefore I was left with little ready cash to attend to the business.

Yours truly,
(Sgd.)

S. ZUBELDIA.

609

TABACO, January 29, 1907.

Manager of Hongkong Bank, Manila.

DEAR SIR: Please be advised of the enclosed copy of the letter which Messrs. Aldecoa & Company had written me and tell me if by virtue of the instrument a copy of which is in my possession I can work with the house offering me better advantages.

I must call your attention that it is impossible to work with Messrs. Aldecoa & Company at the present time since there is no one to accept drafts against them in view of what happened with the former drafts that having been accepted were not paid. No business is possible here without drafts to *much* business, and therefore once in that position I am utterly unable to comply with what I have agreed with the bank and without fail I shall go to my ruin.

In the manner in which I am working now and I can continue working for a long time, I am quite sure that at the end of this year I shall exceed in a large sum the payment of my obligation and shall finish with the total amount of my balance before the end of four years.

I am yours very truly,

(Sgd.)

SALUSTIANO ZUBELDIA.

610 *Litteral Copy of the Letter of Messrs. Aldecoa & Company.*

By S. S. Sorsogon.

MANILA, January 26, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR. We enclose copies of our postal and telegraphic correspondence up to date. We write to-day to notify you that the members of the firm of Aldecoa & Company have granted me power to this liquidation, amongst which is one which permits the same to receive consignments made to it always within the prudential limits, with which a liquidation should be confined, that is, leaving a margin between the remittance and the orders for the diminution of the balances. On the other hand we are not inclined to consent that our debtors shall deal with other persons while the balance of their account is still pending payment and so we believe that all of them will understand it in order to work in the best harmony. This which we tell you we also have stated to the other consignors and in doing so we think that we comply with a courteous duty towards old friends. We credit in the enclosed account:

Sales account No. 10/184 (December 31)	P9,874.40
" " " 2/ (January 2)	"7,765.22

Yours very truly,

For Aldecoa & Company in Liquidation,

(Sgd.)

WILLIAM URQUHART.

611

MANILA, January 4, 1907.

Mr. Salustiano Zubeldia, Manila.

SIR: We take the liberty to notify you that the sum of P— which you owe the firm of Aldecoa & Company on December 31st, 1906 has been as-igned to this Bank of which please take notice.

You shall oblige us by settling up the liquidation of your debt with the liquidator authorized by said firm at your earliest convenience.

Please acknowledge receipt hereof.

Yours truly,

(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, April 6, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: I take pleasure to acknowledge receipt of your favor dated March 30 last, sending us a draft for P3,000 as first payment on account of your debt with Messrs. Aldecoa & Company for which please accept my thanks.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager*.

612

MANILA, April 20, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: We acknowledge receipt of your favor of the 12 instant enclosing Power of Attorney in favor of this Bank, for which we thank you.

Yours truly,

(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, June 29, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: I acknowledge receipt of your favor dated June 25, 1907 enclosing a draft No. 729 for the sum of P3,000 (three thousand pesos P. C.) against Messrs. Warner Barnes & Co. Ltd. in payment of the second quarterly instalment of the contract regarding your debit balance with Messrs. Aldecoa & Company for which we thank you.

Yours truly,

(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, September 20, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: You shall oblige us by sending us at your earliest convenience the sum of P3,000 (three thousand pesos P. C.), for the quarterly instalment as per agreement.

Yours truly,

(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, October 1st, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: With reference to our letter of September 20 last I would be obliged for an answer to the same and at the same time for a remittance of P3,000 (three thousand pesos Philippine Currency) in payment of your quarterly instalment as per agreement.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

MANILA, October 3, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: I acknowledge receipt of your favor of September 26, 1907, enclosing a draft for P3,000 (three thousand pesos Philippine currency) against Messrs. Warner Barnes & Co. Ltd., in payment of the quarterly instalment as per contract made in
614 regard to your debit balance with Messrs. Aldecoa & Company for which please accept our thanks.

Yours truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

MANILA, December 23, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: We should be obliged for your remittance at your earliest opportunity of the sum of P3,000 (three thousand pesos Philippine currency) in payment of your quarterly instalment as per agreement.

Yours truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

MANILA, February 8, 1907.

Mr. Salustiano Zubeldia, Tabaco.

DEAR SIR: We acknowledge receipt of your favor of the 29 of last month and we are aware of the difficulties you would meet working with the firm of Aldecoa & Company. We believe however that you should continue to work with said firm and at the present condition stipulated by you, and we are of the opinion that while you fulfill your obligation to this bank in due form there
615 will be no need to make any change.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

EXH. X-5.

8519.

Telegram.

January 4, 1907.

Mr. Manuel Veloso Tabin, Ormoc:

Your debt with Aldecoa & Company has been mortgaged to this bank where all payments are to be made in the future.

HONGKONG BANK.

MANILA, January 4, 1907.

Manuel Veloso Tabin, Ormoc.

SIR: We take the liberty to notify you that the sum of P — which you owe- the firm of Aldecoa & Company on December 1906 has been assigned to this bank of which please take notice.

You shall oblige us by settling up the liquidation of your debt with the liquidator authorized by said firm at your earliest convenience.

Please acknowledge receipt hereof.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager*.

616

EXH. X-6.

8519.

Telegram.

January 4, 1907.

Carrancija y Portilla, Daet.

Your debt with Aldecoa & Company has been mortgaged to this Bank where all payments are to be made in the future.

HONGKONG BANK.

MANILA, January 4, 1907.

Carrancija y Portilla, Daet.

SIR: We take the liberty to notify you that the sum of P— which you owe- the firm of Aldecoa & Company on December 31st, 1906, has been assigned to this Bank of which please take notice.

You shall oblige us by settling up the liquidation of your debt with the liquidator authorized by said firm at your earliest convenience.

Please acknowledge receipt hereof.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager*.

617

EXH. X-7.

8519.

Telegram.

January 4, 1907.

Martin Achaval, Legaspi:

Your debt with Aldecoa & Company has been mortgaged to this Bank where all payments are to be made in the future.

HONGKONG BANK.

LEGASPI, May 26, 1907.

The Manager of the Hongkong & Shanghai Banking Corporation,
Manila.

DEAR SIR: I acknowledge receipt of your favor of the 10 and the 14 instant agreeing with whatever you state therein.

You shall find herewith a draft No. 182 against Messrs. Warner Barnes & Co. Ltd. for the sum of P3,000 (three thousand pesos, Philippine currency) which sum I beg you to collect from said gentlemen crediting my account in full for the first instalment due on June 30 next.

If as I expect, I succeed in collecting some amount which I am trying to get from my debtors, before eight months I shall have paid the whole of my debt to that Bank; anyway you may be sure that

I shall comply with my obligations in advance to the stipulated terms.

Yours very truly,
(Sgd.)

M. DE ACHAVAL.

LEGASPI, May 8, 1907.

The Director of the Hongkong & Shanghai Banking Corporation,
Manila.

DEAR SIR: I take pleasure to answer your favors of April 20 and 30 last at hand.

I have been quite surprised to receive together with your letter of the 20 an extract of the account current with Messrs. Aldecoa & Co. in liquidation with which I can in no manner agree, since having assigned to that bank the credit which Messrs. Aldecoa & Company has against me in accordance with the terms of public instrument executed by and between yourself and my representatives Don Jose Aboitiz and Don Vicente Rodriguez on February 8 of the present year, and that bank being therefor the only one I recognize as my creditor by virtue of the assignment of their credit by Messrs. Aldecoa & Company, I can't under any consideration admit that said gentlemen shall continue to consider me as their debtor after having transferred to another the credit which they had against me.

As you may have noticed by my letter of April 26 last I am ready to do whatever depends on me to pay gradually the amount I have acknowledged in favor of that bank without waiting for the instalments agreed to become due; I believe that this shall be a comparatively easy matter for me if the property continues to yield better results as up to the present time, but at any rate I shall comply faithfully with whatever is stipulated on the deed of February 8, without needing the intervention of Messrs. Aldecoa & Company for the compliance therewith.

Yours very truly,
(Sgd.)

M. DE ACHAVAL.

LEGASPI, April 26, 1907.

The Director of the Hongkong & Shanghai Banking Corporation,
Manila.

DEAR SIR: On my return a few days ago from my last trip to

Europe and on taking charge again of the direction of my business in this province, I have learned in detail of the transfer of credit made in favor of that bank by Messrs. Aldecoa & Company, as well as the conditions for the payment and the securities given to the Hongkong & Shanghai Banking Corporation by my attorneys in fact Don Sebastian Munoa and Don Justo Achaval, with all of which transactions I am perfectly satisfied and I ratify them in full binding myself with pleasure to comply with them.

620 As the hemp plantations are getting much better improving from the conditions in which they have been left with the great drought and the typhoon of the year 1905, it shall not only be easy for me to comply on time with my obligation towards that bank as stipulated in the public instrument executed by my agents on February 8 of the present year, but if as I expect the hemp plantations keep on improving I shall be able to pay the whole of the amount agreed without waiting for their becoming due.

With this end in view and desiring to save some interest I take the liberty to enclose you herewith a draft against Messrs. Warner Barnes & Co. of that City for P3,000 which you can collect from said firm issuing the corresponding receipt for said amount as a remittance made on account of the first instalment of my obligation due on June 30 of the present year, the complete payment of which I shall make before that date.

On learning of the correspondence exchanged between the attorneys of that bank and my attorney in fact Mr. Munoa in regard to the registration of the mortgage executed in favor of the Hongkong & Shanghai Banking Corporation I have instructed my attorneys Messrs. Sierra & Roco to hasten as much as possible the registration of the property which I own in common and in undivided shares with Don Justo Achaval causing the incumbence acknowledge-
621 edge in favor of that bank to appear in the same entry, and my said lawyers have informed me that their work is all ready and prepared to ask for and obtain the registration of the said property as soon as this Court opens the Registry, and if it has not been done until now has been due to the fact that they had to correct a small defect they had noticed in the papers and title deeds of Don Justo Achaval.

Said attorneys have also suggested that if that Bank should deem it convenient, they could easily obtain the registration or entry of the mortgage in favor of that bank in the old Registry while the property is being registered in the new Registry of the Property.

Without anything further, I subscribe myself

Very sincerely yours,

(Sgd.)

M. DE ACHAVAL.

LEGASPI, February 16, 1907.

The manager of the Hongkong & Shanghai Banking Corporation,
Manila.

DEAR SIR: Without any of your favors to answer I have the pleasure to send you the deed of acknowledgment of credit with mort-

gage security executed on the 8 of the present month before the Notary Mr. Williams and ratified on the 12 of the present month
 622 of February before the Notary of Ligao Don Francisco Querol by which deed the payment of the credit transferred to that bank by Messrs. Aldecoa & Company is guaranteed, which credit I am to pay directly to that Banking Corporation within the term and under the conditions stipulated in that instrument.

Without any-ting further, I remain

Yours very sincerely,

(Sgd.)

M. DE ACHAVAL,
 p. p. S. MUNOA.

MANILA, January 4, 1907.

Mr. M. de Achaval, Legaspi.

DEAR SIR: We take the liberty to notify you that the sum of P— which you owe- the firm of Aldecoa & Company on December 31, 1906, has been assigned to this bank of which please take notice.

You shall oblige us by settling up the liquidation of your debt with the liquidator authorized by said firm at your earliest convenience.

Please acknowledge receipt hereof.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

623

MANILA, January 9, 1907.

Mr. Martin de Achaval, Legaspi.

DEAR SIR: We confirm our telegram of this date: "your letter of the 7 received we accept your proposition come to Manila at once to arrange agreement. Hongkong Bank."

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

MANILA, January 19, 1907.

Mr. Martin de Achaval, Legaspi.

DEAR SIR: I acknowledge receipt of your favor of the 17 of January 1907 of which contents I have taken notice.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

MANILA, April 20, 1907.

Mr. M. de Achaval, Legaspi.

DEAR SIR: I take pleasure in enclosing herewith an abstract of your account with Messrs. Aldecoa & Company up to March 31 of the present year showing a balance against you for P22-
 624 747.12 which I hope you will find correct.

Yours very truly,

(Sgd.)

A. G. STEPHEN, *Manager.*

MANILA, April 30, 1907.

Mr. M. de Achaval, Legaspi.

DEAR SIR: I acknowledge receipt of your favor of the 26 instant enclosing a draft for P3,000 (three thousand pesos P. C.), against

Messrs. Warner Barnes & Co. for which please accept our thanks.

In regard to the registration of the property which you owe in common and in undivided shares with Mr. Justo Achaval we are willing to let this matter rest in the same condition as it is now.

Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, May 10, 1907.

Mr. M. de Achaval, Legaspi.

DEAR SIR: With reference to our letter of April 30, I have the pleasure to notify you that we have collected the draft against Messrs. Warner Barnes & Co. Ltd., for P3,000 which sum we have entered as payment on account of the P6,000 which become due and payable on June 30, 1907.

625 Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, May 14, 1907.

Mr. M. de Achaval, Legaspi.

DEAR SIR: We acknowledge receipt of your letter of the 6 instant and in reference to the account current we have sent you, we must inform you that we have done so because Messrs. Aldecoa & Company, asked us to do so.

We have taken note however that Messrs. Aldecoa & Company have nothing to do in the matter, as your debit balance to them has been transferred to this bank in accordance with the document signed by your agent and us on February 3, 1907.

Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

MANILA, June 1st, 1907.

Mr. M. de Achaval, Legaspi.

DEAR SIR: I acknowledge receipt of your letter of May 26, enclosing a draft No. 182 against Messrs. Warner Barnes & Co. of this City for P3,000 which sum shall be credited to you when it becomes due.

Yours very truly,
(Sgd.)

A. G. STEPHEN, *Manager*.

626

LEGASPI, January 21, 1907.

The Manager of the Hongkong & Shanghai Banking Corporation,
Manila.

DEAR SIR: Without any of your favors to answer I address you this letter with the sole object of notifying you that the illness of Don Justo de Achaval lasting longer than we expected and in order not to delay any longer the definite settlement of what I agreed with that bank through my attorneys in fact in regard to the transfer, security and form of payment of the credit of Messrs. Aldecoa & Co. against me, on this same date my attorneys in fact Don Justo de

Achaval and Don Sebastian Munoa have substituted the letters of attorney which they hold from me in favor of Don Jose Aboitiz and Don Vicente Rodriguez authorizing them to in my name, place and stead execute a document of acknowledgment of debt with mortgage security in favor of the Hongkong & Shanghai Banking — for the sum of P22,352.63 which is the amount of the credit which Messrs. Aldecoa & Company have transferred to you and which I shall be obliged to pay directly to that Banking establishment in the form, terms and conditions stipulated in that substitution of power of attorney.

Don Justo de Achaval has also executed a special power of attorney in favor of the same Don Jose Aboitiz and Don Vicente
627 Rodriguez for them in his name, place and stead to execute before the notary Don Enrique Barrera or before any other which they may think convenient the proper deed of mortgage in favor of the Hongkong & Shanghai Banking — securing the payment of the credit acknowledged by me in favor of said bank, with the undivided half belonging to him of the property which we own in common within the jurisdiction of the municipality of Polangui.

Trusting that with the letters of attorney sent to the said Don Jose Aboitiz and Don Vicente Rodriguez, it shall be an easy matter for you to come to a definite arrangements, and begging you to excuse the delay had in this matter by reason of the illness of Mr. Achaval,

I remain yours very truly,

M. DE ACHAVAL.

(Sgd.)

p. p. S. MUNOA.

LEGASPI, January 17, 1907.

The Manager of the Hongkong & Shanghai Banking Corporation,
Manila.

DEAR SIR: I take pleasure to answer your favors of the 4 and 9 instant which I have at hand and of the contents of which I have taken notice.

According to the entries in my books I find that the balance of twenty-two thousand three hundred fifty-two pesos and sixty-
628 three cents (P22,352.63) which in your letter of the 4 instant you tell me I appear to be in debt to Messrs. Aldecoa & Company, on December 31, 1906, is correct, and this amount I am agreeable to pay directly to that bank in the form, and under the conditions indicated in the letter which my attorneys in fact Don Justo Achaval and Don Sebastian Munoa wrote you under date of the 7 instant.

In order to close the arrangement, cancelling the deed executed by me on March 23, 1906, in favor of Messrs. Aldecoa & Co., and executing a new deed acknowledging this credit in favor of the Hongkong Bank binding myself to pay the same in the manner offered in the above said letter of the 7 instant, my attorneys in fact Don Justo de Achaval and Don Sebastian Munoa were about to sail today for that City, but a small illness of the former compels them to postpone their trip till next week when they shall embark without

failure on the S. S. Venus or else they shall send sufficient powers of attorney so as to settle definitely the transaction agreed with that bank and securing your credit as indicated in the aforementioned letter of the 7 instant.

Without anything further and asking you to excuse the short delay in the trip of my attorneys in fact, I remain

Very sincerely yours,

M. DE ACHAVAL,

p. p. S. MUNOA.

(Sgd.)

629

DEF. ALDECOA EXH. X-8.

8519.

TABACO, January 29, 1907.

Manager of the Hongkong Bank, Manila.

DEAR SIR: Please be advised of the enclosed copy of the letter which Messrs. Aldecoa & Company had written me and tell me if by virtue of the instrument a copy of which is in my possession I can work with the house offering me better advantages.

I must call your attention that it is impossible to work with Messrs. Aldecoa & Company at the present time since there is no one to accept drafts against them in view of what happened with the former drafts that having been accepted were not paid. No business is possible here without drafts to much business, and therefore once in that position I am utterly unable to comply with what I have agreed with the bank and without fail I shall go to my ruin.

In the manner in which I am working now and I can continue working for a long time, I am quite sure that at the end of this year I shall exceed in a large sum the payment of my obligation and shall finish with the total amount of my balance before the end of four years.

I am yours very truly,

(Sgd.)

SALUSTIANO ZUBELDIA.

630

After the oral and written evidence was introduced and upon written arguments filed by all parties in this case, the court on September 14, 1912, rendered the following decision.

(Title of the Case Omitted.)

LOBINGIER, *Judge*:

This is an action by the plaintiff corporation against the defendants, Aldecoa & Company, in liquidation, Doña Isabel Palet, Don Joaquín Ibañez de Aldecoa, Don Zoilo Ibañez de Aldecoa and Doña Cecilia Ibañez de Aldecoa, Plaintiff seeks a money judgment against the defendants Aldecoa and Company, as principal debtor, and the other defendants as subsidiary debtors in solidum, and a

decree of foreclosure with respect to the mortgage executed by certain of the defendants.

The defendant Aldecoa and Company, in liquidation interposes a general denial and counterclaim for damages alleged to have been caused them by the plaintiff by inducing certain of the customers of the defendant firm to discontinue business relations with them, and for an accounting for the proceeds of certain collections alleged to have been made by the plaintiff Bank under authority from the defendant Aldecoa and Company.

The defendant Isabel Palet interposes a general denial and a special defense, in which she alleges that she has been prejudiced by the failure of plaintiff Bank to realize upon certain credits owing to Aldecoa and Company, which she alleges have been assigned by Aldecoa and Company to the plaintiff corporation and which
631 the latter has failed to collect and apply to the discharge of its credits against Aldecoa and Company.

The defendants Joaquin, Zoilo and Cecilia Aldecoa make a general denial, and plead as special defenses:—

(a) That they have been relieved from their liability as partners of Aldecoa and Company by a judgment rendered in this court in case 6088;

(b) That there is another suit pending between the plaintiff corporation and the defendants Joaquin and Zoilo Aldecoa in which the validity of the mortgages set out in plaintiff's exhibit "A" is drawn into question in so far as it affects the defendants Joaquin and Zoilo Aldecoa;

(c) That plaintiff has failed to collect certain credits said to have been assigned to it by Aldecoa and Company for collection and application to the discharge of the indebtedness sued upon, which credits, it is alleged would have been sufficient to discharge the said indebtedness had they been collected.

The defendants Joaquin Aldecoa, Zoilo Aldecoa and Cecilia Aldecoa also filed a cross-complaint (record 227) in which they allege that they are creditors of Aldecoa and Company in the sum of *come* P70,000 as a balance due upon a certain judgment recovered by them against the said firm of Aldecoa and company; that this claim is entitled to preference over that sued upon by plaintiff; that the mortgages executed by the defendant Aldecoa and Company in favor of plaintiff corporation, incorporated by reference into plaintiff's complaint as Exhibits "C," "E," "G," "F" and "D," were void as against the cross-complainants. This cross-complaint the plaintiff corporation answered making a general denial (record page 114).

Mr. William Urquhart filed a complaint in intervention (record 147) in which he sets forth that the defendant Aldecoa and Company is indebted to him in the sum of P20,976.68 for money deposited by him with said firm, and for the further sum of P9,868.92
632 for salary due him as liquidator up to the time of the filing of his complaint of intervention and for such salary as might accrue thereafter at the rate of P500. per month, and asks that he be treated as a preferred creditor of Aldecoa and Company with respect to the plaintiff for these amounts. The plaintiff ex-

cepted to the order permitting the filing of this complaint in intervention and filed an answer thereto which contains a general denial of the allegations of the complaint in intervention.

In the course of the trial it was stipulated in open court (record Page 574) that amended pleadings might be filed by the parties. In pursuance of this agreement amended pleadings were presented by the plaintiff and all the defendants, but the substance of the issues was not changed thereby. The intervenor, Mr. Urquhart, elected to stand upon his original pleading.

Upon the suggestion of the death of the defendant Alejandro S. Macleod the proceeding as to him was discontinued.

Upon the pleadings and proof the Court makes the following findings of fact:—

I.

That the Hongkong and Shanghai Banking Corporation is a foreign banking corporation duly organized to engage in business in the Philippine Islands, and doing business therein at all of the times hereinafter mentioned.

II.

That Aldecoa and Company is a general mercantile partnership (*sociedad mercantil regular colectiva*) organized in accordance with the Code of Commerce of the Philippine Islands under articles set forth in a certain public instrument executed in Manila the 31st day of December, 1898, and duly recorded in the Mercantile Register of this city (Exhibit "H").

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III.

That the defendant Doña Isabel Palet *which she* was a widow, of lawful —, and with full capacity to contract became one of the capitalist partners of the said firm of Aldecoa and Company organized as above stated, by sign- the articles of partnership hereinbefore referred to and continued to be such capitalist partner until it went into liquidation on the 31st day of December, 1906.

IV.

That the defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet are the children of the defendant Doña Isabel Palet, and of her deceased husband, Don Zoilo Ibañez de Aldecoa, and at the time of the execution of the articles of partnership above referred to (Exhibit "H") were minors subject to the patria potestas of their said mother.

V.

That the defendant Doña Isabel Palet and her deceased husband, Don Zoilo Ibañez de Aldecoa, were native- of Spain Spanish parentage (Rec. p. 567); that the said Zoilo Ibañez de Aldecoa, husband

of the defendant Doña Isabel Palet, died in the Philippine Islands prior to the American occupation (Record page 568) that the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet were born in Manila in March, 1884, and July, 1885, respectively (Record page 567); that said defendants and their mother, the defendant Doña Isabel Palet, were absent from the Philippine Islands during all the period embraced between the end of the year 1897 and the beginning of the year 1903 (Record page 568).

VI.

That on the 31st day of July, 1903, while in the City of Manila, P. I., the defendant Doña Isabel Palet executed in favor of her
634 sons, the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet, the instrument introduced in evidence herein as plaintiff's exhibits "T" (Record page 306) and "U" (Record page 311) whereby the said defendant Isabel Palet emancipated the said defendants. That at the time of the execution of the said instruments the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet were each over the age of 18 years, that the said defendants expressed their acceptance of the emancipation conferred upon them by their mother by signing the said acts of emancipation above referred to.

We do not think that it can be successfully contended that the provisions of the Civil Code in which the patria potestas is set forth have been repealed. The patria potestas is one of the most ancient rights recognized by the civil law. Existing long before the Twelve Tables, it is expressly recognized in that famous collection and continued to exist with slight modifications during the entire life of the Roman Law. When that system was imported into Spain the patria potestas came with it and is recognized in the Siete Partidas (IV (18) 1) in all its vigor. As the latter formed the basis of the Philippine common law it is clear that the patria potestas did not depend upon any provision of the Civil Code, having been in force in the Philippine Islands for centuries before that instrument was extended here. To hold that a doctrine of such antiquity and importance, and constituting such an essential feature of the civil law and domestic relations is abrogated by a doubtful provision of the new Code of Civil Procedure, would be revolutionary. Sections 551 and 553 of said code which are pretended to have effected such repeal are not necessarily inconsistent with the patria potestas. They should be
635 harmonized, if possible (U. S. v. Reyes, 10 Phil. 427), and we think they can be. At least the Supreme Court has recognized, the patria potestas as existing since the present Code of Procedure came into force (Mendoza v. Ibañez, 4 Phil. 666); Tuazon v. Orozco, 5 Phil. 61; Reyes v. Alvarez, 8 Phil. 725). If a doctrine so startling as contended for by counsel for defendants is to be announced, it should be by the Supreme Court, and not by this court. Besides, we are disposed to agree with counsel for plaintiffs that the defendants, Joaquin and Zoilo Aldecoa and their mother, being Spanish subjects were governed in this matter by the law of

Spain (*Bosque v. U. S.*, 209 U. S. 96; *Martinez v. Castro*, 2 P. R. Fe. 523; *Rios v. Burset*, 2. P. R. Fed. 192, affirmed in 209 U. S. 283), and also that they have ratified the contract of partnership. Hence we further find:

VII.

That at the time of the execution by the defendants Isabel Palet and Joaquin and Zoilo Ibañez de Aldecoa y Palet of the acts of emancipation above referred to, the law of the Kingdom of Spain regarding the emancipation of minors, and the effects of such emancipation with respect to the latter, and by which the nationality, status and capacity of Spanish subjects residing in foreign countries was to be governed, was that contained in Articles 9, 18, 154 to 173, inclusive, and 314 to 319, inclusive, of the Civil Code of the Kingdom of Spain, which said articles are the same as the articles under the same members of the Civil Code in force in the Philippine Islands on the 14th day of August, 1898.

VIII.

That after the execution by the defendant Isabel Palet and the defendants Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet of the acts of emancipation above mentioned (Exhibits "T" and "U") the two defendants last named participated in the management of Aldecoa and Company as partners by being present at and voting at meetings of the partners of the company upon matters connected with its affairs (See Plaintiff's Exhibits "W," "X," "Y," and "Z," record pages 322 to 327 inclusive).

IX.

That on the 23rd day of February, 1906, the defendants Aldecoa and Company, Doña Isabel Palet, Don Joaquin Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet and the plaintiff corporation entered into an agreement by which the latter granted to Aldecoa and Company a credit in account current up to the sum of P475,000 upon the terms and conditions set forth in the written instrument executed on that date by said parties, a copy of which, admitted by the defendants to be correct, is in evidence herein as plaintiff's Exhibit "A," which said Exhibit "A" is hereby incorporated into these findings by reference.

X.

That thereafter, to wit, on the 23rd day of March, 1906, the plaintiff corporation and the defendants Isabel Palet, Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Aldecoa and Company executed an additional contract supplemental to the contract of February 23, 1906, above referred to as Exhibit "A," for the purpose of increasing the security given the plaintiff corporation for

the performance of the obligations in its favor undertaken by the defendant Aldecoa and Company under the contract of February 23, 1906, (Exhibit "A"), correcting an error in the description of certain real property mortgaged to the plaintiff bank by the said instrument of February 23, 1906, and determining the amount for which each of the mortgaged properties should be liable, all of which appears more particularly in the said supplemental contract of March 23, 1906, a copy of which, admitted by defendants to be correct, is in evidence herein as plaintiff's Exhibit "B" (record page 181) and is hereby incorporated by reference into these findings.

XI.

That the mortgages created by said contracts of February 23, 1906, (Exhibit "A") and March 23, 1906 (Exhibit "B") were duly recorded in the Register of Deeds of the City of Manila.

XII.

That the real property of the defendant Doña Isabel Palet mortgaged to the plaintiff corporation by said instrument of March 23, 1906, (Exhibit "B"), was, at the instance of the said defendant, registered under the provisions of the Land Registration Act subject to the mortgage thereon in favor of plaintiff by decree 1701 of the court of Land Registration dated March 8, 1907, in which decree, a certified copy of which is in evidence herein as plaintiff's exhibit "K" (Record page 277), the said property is described as follows, to wit:

Un terreno, con las edificaciones existentes en el mismo, situado en la Calle Real Nos. 561 y 563 esquina a la calle Cortabitarte, Distrito de Malate.—Linda por el No. y So. con propiedad de la solicitante y coherederos; por el N. E. con la Calle Real; y por el S. E. con la calle Cortabitarte.—Partiendo de un punto marcado "a" en el plano, cuyo punto es el extremo So. del chaflán situado en la intersección de la línea So. de la Calle Real y la línea No. de la Calle Cortabitarte; y desde dicho punto "A" S. 66 grad. 21' 24" O., siguiendo dicha línea anterior, veinte y cinco metros con cuarenta y seis centímetros (25.46) al punto "B;" desde este punto N. 20 grad 33' 36" O., veinte y dos metros con setecientos diez y nueve milímetros (22.719) al punto "C;" desde este punto N. 68 grad 32' 49" E., veinte y nueve metros con noventa y ocho milímetros (29.948) al punto "D" desde este punto S. 19 grad. 10' 11" E., siguiendo la línea So. de la Calle Real, diez y ocho metros con doce centímetros (18.12) al punto "E" desde este punto S. 27 grad 14' 22" O., siguiendo el ya citado chaflán, cinco metros con cincuenta y un centímetros (5.51) al punto de partida; midiendo una extensión superficial de seiscientos cincuenta metros con cincuenta y cuatro decímetros cuadrados (650.54).—Todos los puntos nombrados se hallan marcados en el plano, la orientación seguida es la magnética; fecha de la medición 7 de Octubre de 1906.

XIII.

That on the 6th day of November, 1906, the defendants Isabel Palet, Joaquín Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Cecilia Ibañez de Aldecoa y Palet applied to the Court of Land Registration for the Registration of their title to the real property described in paragraph 4 of the deed of March 23, 1906, herein referred to as exhibit "B", in which they state that the undivided three-fourths of the said properties belonging to the defendants Isabel Palet, Joaquín Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet was subject to the mortgage in favor of the Hongkong and Shanghai Banking Corporation, plaintiff therein, to secure the sum of P203,985.79 under the terms of said deed of March 23, 1906, (see plaintiff's Exhibit "L" record page 283). Pursuant to this petition the said Court of Land Registration, by decree dated the 8th day of September 1907, in evidence herein as plaintiff's Exhibit "L1" (record page 283), registered the title of the applicants to the said property subject, with respect to the undivided three fourths interest therein pertaining to the defendants Isabel Palet, Joaquín Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet, to the mortgage in favor of the plaintiff herein to secure the sum of P203,985.97. A description of the said property, as set fourth in said decree, is as follows, to wit:

639 Un terreno con las edificaciones levantadas en el mismo, situado entre la calle Real Nos. 545, 555 y 557 y la calle Cortabitarte Nos. 1 al 7, Distrito de Malate.—Linda por el No. con un callejón sin nombre que separa esta propiedad de la de Silvino Lopez Tuñon y con propiedad de Segundo Javier; por el N. E. con la calle Real; por el E. con propiedad de Isabel Palet y Gabarro; por el S. E. con la calle cortabitarte; y por el So. con la playa de la bahía de Manila.—Partiendo de un punto marcado "b" en el plano, cuyo punto se halla al S. 66 gds. 21' 24" O. y veinte y cinco metros con cuarenta y seis centímetros (25.46) del extremo So. del chaflán situado en la intersección de la línea No. de la calle Cortabitarte y la línea So. de la calle Real; y desde dicho punto "b" S. 66 gds. 21' 24" O., trece metros con quinientos treinta y nueve milímetros (13.539) al punto "c"; desde este punto S. 64 gds. 25' 25" O., treinta y siete metros consetecientos con setecientos ochenta y ocho milímetros (37.788) al punto "d"; desde este punto S. 64 gds. 25' 25" O., veinte y cinco metros con treinta y seis centímetros (25.36) al punto "e"; desde este punto N. 23 gds. 54' 54" O., setenta y nueve metros con seis cientos once milímetros (79.611) al punto "f"; desde este punto N. 69 gds. 49' 09" E., tres metros con cincuenta centímetros (3.50) al punto "g"; desde este punto S. 23 gds. 54' 54" E., ochenta y cinco centímetros (0.85) al punto "h"; desde este punto N. 69 gds. 49' 09" E., treinta y siete metros con ochocientos noventa y cuatro milímetros (37.894) al punto "i"; desde este punto N. 24 gds. 40' 41" O., catorce metros con ciento cincuenta y tres milímetros (14.153) al punto "j"; desde este punto N. 69 gds. 27' E., sesenta y ocho metros con treinta y tres milímetros (68.038) al punto "k";

desde este punto S. 24 gds. 17' 34" E., treinta y cuatro metros con ciento treinta y dos milímetros (34.132) al punto "l"; desde este punto S. 22 gds. 30' 39" E., diez y siete metros con novecientos noventa y seis milímetros (17.996) al punto "m"; desde este punto S. 19 gds. 10' 11" E., diez metros con noventa y cinco milímetros (10.975) al punto "n", desde este punto S. 68 gds. 32' 49" O., veinte y nueve metros con novecientos cuarenta y ocho milímetros (29.948) al punto "o"; desde este punto S. 20 gds. 33' 36" E., veinte dos metros con setecientos diez y nueve milímetros (22.719) al punto de partida; midiendo una extensión superficial de ocho mil trescientos treinta y cinco metros con diez decímetros cuadrados (8.335.10).—Las líneas del punto "b" al "c" siguen el lado No. de la calle Cortabitarte, del "c" al "f" la playa de la Bahía de Manila, del "f" al "k" el lado S. E. de un callejón sin nombre y del "k" al "b" el lado So. de la calle Real.—Todos los puntos nombrados se hallan marcados en el plano y sobre el terreno las líneas que forman el perímetro con muros propios a excepción de las líneas "n-o" y "o-b" que lo están con muros medianeros; la orientación seguida es la magnética; fecha de la medición, 7, 14 y 21 de Septiembre de 1906.

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XIV.

That on the 22nd day of December, 1906, the defendant Aldecoa and Company by public instrument executed before a notary public of the City of Manila, as additional security for the performance of the obligations assumed by them in favor of the plaintiff corporation under the terms of the contracts herein referred to as Exhibits "A" and "B", mortgaged to the plaintiff bank the right of mortgage (derecho real de hipoteca) pertaining to the said defendant Aldecoa & Co. upon certain real property in the Province of Albay, P. I., mortgaged to the defendant Aldecoa & Co. by one Salustiano Zubeldía to secure an indebtedness to that firm, all of which appears more particularly from a copy of the said public instrument in evidence herein as plaintiff's Exhibit "C" record page (184) and admitted by defendants to be correct, which said exhibit is hereby incorporated by reference into these findings. Subsequently to the execution of the instrument referred to herein as Exhibit "C," Zubeldía caused his title to the mortgaged property to be registered under the provisions of the Land Registration Act subject to a mortgage to the defendant Aldecoa and Co. to secure the sum of P103,943.84, and to the mortgage of the mortgage right of Aldecoa and Company to the plaintiff corporation, all of which appears more fully from the certificate of title issued to the said Zubeldía and the indorsements thereon in evidence herein as Plaintiff's Exhibit "M" (record page 286), to which reference is hereby made as part of these findings. In the said certificate of title the property mortgaged by the said Salustiano Zubeldía is described as follows:

641 Un terreno con las edificaciones y mejoras existentes en el mismo, situado en la calle Padre Prieto, Municipio de Tabaco. Linda por el N. E. con propiedad de los herederos de Ceferino Aram-

buro; por el S. E. con propiedades de Mariano Villanueva y Fausto Ormaechea; por el So. con propiedad de Modesto Bromeo y por el No. con la calle Prieto.—Partiendo de un punto marcado "A" en el plano, cuyo punto se halla a los 84 gds. doscientos setenta y seis metros con veinte y seis centímetros (276.26) y 199 gds. 30' veinte y dos metros con cinco centímetros (22.05) de la casa municipal; y desde dicho punto "A" 218 gds. cuarenta y Cuatro metros con veinte y tres centímetros (44.23) al punto "B"; desde este punto 222 gds. siete metros connoventa y siete centímetros (7.97) al punto "C"; desde este punto 144 gds. veinte y siete metros con treinta y ocho centímetros (27.38) al punto "D"; desde este punto 147 gds. veinte y siete metros con cuarenta y tres centímetros (27.43) al punto "E"; desde este punto 66 gds. veinte y cinco metros con veinte y ocho centímetros (27.38) al punto "F"; desde este punto 66 gds. treinta y ocho metros con cinco centímetros (38.05) al punto "G"; desde este punto 316 gds. treinta y tres metros con cuarenta y nueve centímetros (33.49) al punto "H"; desde este punto 317 gds. 30' veinte y dos metros (22) al punto "I"; desde este punto 318 gds. veinte y seis metros con setenta y siete centímetros (26.77) al punto de partida; midiendo una extensión superficial de tres mil setecientos setenta y cuatro metros cuadrados (3.774).—Las líneas del punto "A" al "C" siguen al lado S. E. de la calle Prieto Todos los puntos nombrados se hallan marcados en el plano; la orientación seguida es la magnética; fecha de la medición 15 de Noviembre de 1906.

XV.

That on the 31st day of December, 1906, the defendant firm Aldecoa & Co. went into liquidation on account of the expiration of the term for which it had been organized, and the intervenor, Mr. William Urquhart, was duly elected by the partners as liquidator, and by resolution dated January 24, 1907, he was granted the authority expressed in said resolution, a copy of which, admitted by the defendants to be correct is in evidence herein as plaintiff's Exhibit "G" (record page 270) and is hereby incorporated by reference into these findings.

XVI.

That on the 13th day of June, 1907, at the request of the defendant Aldecoa & Co., and of the defendants Isabel Palet, Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet, and to enable the said defendant Aldecoa & Co., to obtain an attachment upon the property of one Alejandro S. Macleod in a suit then about to be brought against the said Macleod by Aldecoa and Company for the purpose of recovering from him certain shares of the Pasay Estate Co., Ltd., the plaintiff bank undertook and agreed to provide an attachment bond in the required sum of P50,000 upon the condition and agreement that the proceeds of the suit against the said Macleod, after deducting the cost of the proceeding, should be applied in their entirety to the discharge pro

tanto of the liability of Aldecoa and Company, to the plaintiff corporation; that the instrument of mortgage of February, 23, 1906, referred to herein as Exhibit "A" was incorporated by reference into the said agreement of March 13, 1907. One of the duplicate originals of the said agreement of March 13, 1907, admitted by defendants to be genuine, is in evidence herein as plaintiff's Exhibit "V" (record page 314) and is hereby incorporated by reference into these findings.

This contract (Exhibit "V") was signed by the defendant Joaquín Ibañez de Aldecoa y Palet personally, by William Urquhart, as liquidator of Aldecoa and Company, and by Mr. José María Ibañez de Aldecoa as attorney in fact of the defendants Isabel Palet and Zoilo Ibañez de Aldecoa y Palet, under the authority conferred upon him by the letters of attorney in evidence herein (record page 541) stipulation record page 519) as Plaintiff's Exhibit CCC.)

XVII.

That as the result of the litigation between Aldecoa and Company and A. S. Macleod the former became the owner through a compromise agreement executed in Manila the 14th day of August,

1907, a copy of which forms part of defendant's Exhibit 643 3 (record pages 370 to 375, inclusive), of the shares of the

Pasay Estates Co., Ltd., referred to in the contract of March 13, 1907 (Exhibit "V"), and on the 30th day of August, 1907, Mr. William Urquhart, as liquidator of Aldecoa and Company, under the authority vested in him as liquidator, and in compliance with the terms of the contract of June 13, 1907 above referred to mortgaged to the plaintiff corporation by way of additional security for the performance of the obligations assumed in favor of plaintiff under the terms of the contracts referred to herein as Exhibits "A" and "B," the 312 shares of stock of the Pasay Estates Co., Ltd., acquired by Aldecoa and Company as above stated, upon the terms set forth in the deed of mortgage of said shares in evidence herein as plaintiff's Exhibit "D" (record page 194), which is hereby incorporated by reference into these findings.

XVIII.

That on the 31st day of March, 1907, the defendant Aldecoa & Co., by public instrument executed before a notary public in the City of Manila, as additional security for the performance of the obligations assumed by them in favor of the plaintiff corporation under the terms of the contracts herein referred to as Exhibits "A" and "B," mortgaged to the plaintiff bank the right of mortgage (derecho real de hipoteca) pertaining to said firm of Aldecoa and Company upon certain real estate in the Province of Ambos Camarines, Philippine Islands mortgaged to the defendant Aldecoa and Company by one Andres Garchitorena y Medina to secure an indebtedness to that firm of P71,915.07, of which a balance of

P20,282.19 was still due Aldecoa and Company from the said Garchitorena at the time of the execution of the said instrument, all of which appears more particularly from the copy of said public instrument in evidence herein as plaintiff's Exhibit "E," (record page 199) admitted by defendants to be correct, and which is hereby incorporated by reference into these findings. The mortgage so created in favor of the defendant bank upon the mortgage right of Aldecoa and Company upon said real property has been duly recorded in the Register of Deeds of the Province of Ambos Camarines. The real estate affected by the said mortgage is described as follows:

Finca rústica consistente en un terreno destinado a pastos de animales proximos a las Visitas de Gibgos, Taytay y Pamboan en la provincia de Ambos Camarines; linda por el Norte con terrenos de Don Eulalio Fernandez; por el Este con el mar y manglares del Estado; por el Sur con pastos de Don Mariano Villamor el río denominado Tuytuy que desemboca en la Visita de Pamboan y por el Oeste, con el puerto de Sisiran; midiendo una extensión superficial de novecientos cincuenta y cuatro hectáreas.

Otra finca rústica, consistente en un terreno enclavado en el sitio denominado Salvación de la Visita de Higñaroy del pueblo de Tingaon de la provincia de Ambos Camarines de una superficie de seiscientos siete hectáreas veintiseis áreas, de las cuales cuatrocientos ochenta y seis hectáreas y setenta y nueve áreas son en una parte cogonales y por otra sembrados de abacá y ciento veinticuatro hectáreas y cuarenta y siete áreas de cogonal cuyos linderos so: al Norte bosques del Estado, terrenos abacales de Don Paciano Badiran, Don Luis Jallores, arroyo Tinangay y arroyo Talanquiso, al Sur con el río Osini, unión del río daso con el Osini y el citado río Daso, por el Este con el río Gigaron y terreno de Don Juan Filipino, y por el Oeste con terreno de Pedro Barrubia y el citado río Osini. Esta finca se halla inscrita a los folios 16 y 8, libros 1.0 y 1.0 del pueblo de Caramaon y Tigaon respectivamente obrantes a los folios 30 vuelto y 25 vuelto, 247 al 248, inscripciones segundas en el Registro de la Propiedad de Camarines Sur.

XIX.

That on the 31st day of March, 1907, the defendant Aldecoa and Company by public instrument executed before a notary public of the city of Manila, as additional security for the performance of the obligations assumed by them in favor of the plaintiff corporation under the terms of the contracts herein referred to as Exhibits "A" and "B," mortgaged to the plaintiff bank the right of mortgage pertaining to said firm of Aldecoa and Company upon certain real property in the Province of Ambos Camarines mortgaged to the defendant Aldecoa and Company by the firm of Tremoya Hmnos, and by Don Liborio Tremoya, respectively, to secure an indebtedness of Tremoya Hermanos to said firm of P43,117.40, and of Liborio Tremoya personally of P75,-

463.54, all of which appears more particularly from the copy of the said public instrument in evidence herein as Plaintiff's Exhibit "F" (record page 208), admitted by the defendants to be correct, and which is hereby incorporated by reference into these findings. The mortgage so created in favor of the plaintiff bank upon the mortgage right of Aldecoa and Company upon the said real property has been filed for record with the Register of Deeds of the Province of Ambos Camarines. The real estate affected by the said mortgages is described as follows:

Properties Mortgaged by Tremoyq Hmnos.

A. Finca urbana, compuesta de casa habitación, de piedra en la planta baja y de madera los altos, y camarines con prensa para abacá, y almacén todo en una sola parcela cercada con muro de cal y canto, ubicada en el pueblo de San José, provincia de Ambos Camarines, Islas Filipinas, mide el solar en que está edificada la finca descrita, una extensión superficial de diez y nueve áreas teniendo de frente cincuenta metros. Linda al Norte con la calle de Milaor, al Sur con terrenos de la Iglesia, al Este con el solar de Don Tomás R. Perez y al Oeste con la calle de San Vicente; adquirida por compra a Don Andres Garchitorena; esta finca fué justipreciada en veinte mil pesos (P-0,000.00) Filipinos y se fijó su responsabilidad en diez y seis mil novecientos diez y siete (P16,917.00) pesos Filipinos por capital e intereses correspondientes a esta suma, más setecientos pesos Filipinos (P700.00) para el pago de gastos y costas que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

B. Finca urbana, sita en el pueblo de San José provincia de Ambos Camarines, Islas Filipinas, compuesta de un camarín, que mide siete metros sesenta y cinco centímetros de fondo, siendo su construcción de cal y canto y estando situado a sesenta centímetros del límite del solar por la parte Este o sea por el lindero del solar de Don Quintín Barrameda, y a tres metros por la parte Sur del solar, o sea la calle de Milaor; mide el solar en que esté enclavada esta finca una extensión superficial de ocho áreas y sesenta y ocho centiáreas, linda al Norte con el solar de Don Quintín Barrameda y el de la testamentaria de Don Manuel Achondo, al Sur con la Calle Milaor, al Este con el solar de Don Quintín Barrameda y al Oeste con la calle de San Vicente; adquirida por compra a Don Andrés Garchitorena; esta finca fué justipreciada en ochocientos pesos (P800.00) Filipinos y se fijó su responsabilidad en quinientos (P500.00) Filipinos por capital e intereses correspondientes a esta suma, más cien pesos (P100.00) Filipinos para pago de costas y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

C. Finca urbana, enclavada en el municipio de San José, provincia de Ambos Camarines, Islas Filipinas, consistente en un kiosco de diez metros de frente por seis de fondo, siendo su construcción de tabla y hierro galvanizado. Mide el solar de esta finca una extensión superficial de treinta y ocho áreas y noventa centiáreas,

linda al Norte con el solar de la testamentaria de Don Manuel Achondo, al Sur con la calle de Milaor, al Este con la calle de San Vicente, al Oeste con el solar de Don Andrés Garchitorena, adquirida por compra a Don Andrés Garchitorena; esta finca fué justipreciada en ochocientos pesos (P800.00) filipinos y se fijó su responsabilidad en quinientos (P500.00 pesos filipinos y por capital e intereses correspondientes a esta suma, más cien (P100.00) pesos filipinos para el pago de costas y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

D. Finca urbana, enclavada en la Visita de Sabang del municipio de San José, provincia de Ambos Camarines, Islas Filipinas, compuesta de un camarín de cal y canto y de una casa también de cal y canto en la planta baja y maderas en la alta ocupando en el solar una extensión superficial de doscientos noventa y nueve metros y sesenta y cinco centímetros cuadrados. Mide el solar una hectarea, veinticinco áreas y ochenta centiáreas, linda al Norte con el camino que se dirige a San José, al Sur con el Mar Pacífico, al Este con el solar de Don Andrés Garchitorena y al Oeste con el solar de la testamentaria de Don Manuel Achondo; adquirida parte por construcción y parte por compra a Don Garchitorena; esta finca fué justipreciada en quince mil pesos (P15,000) filipinos y en la relacionada escritura de 8 de Junio de 1904 se fijó su responsabilidad en la suma de diez mil pesos y cuarenta centimos (P10,000.40), moneda filipina, más setecientos Pesos (P700.00) filipinos para el pago de costa y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

E. Un late en Tigaon del pueblo del mismo nombre en el sitio de Taloojon de la provincia de Ambos Camarines, justipreciada en veinte mil pesos (20,000.00) filipinos, fijandose su responsabilidad en la mencionada escritura en diez y seis mil pesos (P16,000.00) filipinos, más quinientos pesos (P500.00) para costas y gastos en caso de litigio.

647 F. Todos los lates que hay en las Visitas de Payatan, La Luz y Pinalabanan, valorados en ocho mil pesos (P8,000.00) filipinos, y en dicha escritura se fijó su responsabilidad en cinco mil pesos (P5,000.00), más quinientos pesos filipinos (P500.00), en caso de litigio.

G. Casa y solar en Tingaon, valorados en ochocientos pesos (P800.00) filipinos, fijándose su responsabilidad en la relacionada escritura en quinientos pesos (P500.00), más cien pesos (P100.00) filipinos para costas y gastos en caso de litigio.

H. Casa y almacén de hierro galvanizado en el pueblo de Sanay de la provincia de Ambos Camarines, valorados en mil (P1,000.00) pesos filipinos, y en dicha escritura de 8 Junio de 1904 se fijó su responsabilidad en ochocientos pesos filipinos (P800.00) más cien pesos (P100.00) filipinos para costas y gastos en caso de litigio.

I. Tres lates abacales en Buyo del pueblo de Goa, de la provincia de Ambos Camarines, valorados en siete mil pesos (P7,000.00) filipinos, fijándose en dicha escritura su responsabilidad en la suma de cinco mil pesos (P500.00) filipinos, más quinientos pesos para costas y gastos en caso de litigio.

J. Sementeras en San José de Lagonoy, de la provincia de Ambos Camarines, valorados en novecientos pesos (P900.00) filipinos y en dicha escritura se fijó su responsabilidad en la suma de cuatrocientos pesos (400.00) filipinos, más cien pesos (P100.00) para pago de costas y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

Properties Mortgaged by Liborio Tremoya.

K. Finca urbana o sea un solar situado en la calle Daquitán del barrio de Tabuco del Municipio de Nueva Cáceres, provincia de Ambos Camarines, Islas Filipinas que mide dos mil ciento quince metros cuadrados, lindante por la derecha entrando Ana Jacobo Heredera de Feliciano Jacobo, Isidoro Francisco, por la izquierda calle pública sin nombre que va a los camarines de carga y descarga de los vapores, por frente la calle de Daquitán y por la espalda Bonifacia Regalada. Dentro de cuyo solar se halla construido un edificio de materiales fuertes con prensa para abacá. Adquirido el solar por compra a Don José Gallitabeitia según escritura número setenta y cinco otorgada en veinticuatro de Septiembre de mil novecientos uno ante el Notario de Nueva Cáceres, provincia de Ambos Camarines Don Tomás Flordelisa; y el edificio por construcción propia. Dicha finca se halla inscrita en el antiguo registro de la propiedad de dicha provincia Tomo segundo, libro primero de Nueva Cáceres, folio cuarenta vuelto, finca número doce, inscripción cuarta; esta finca fué avaluada en cuarenta y cinco mil (P45,000.00) pesos filipinos, y se fijó su responsabilidad en cuarenta y cuatro mil (P44,000.00) pesos filipinos e intereses correspondientes a esta suma, mas quinientos pesos (P500.00) para costas y gastos en caso de litigio.

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XX.

That on the 30th day of January, 1907, the defendant Aldecoa and Company, by public instrument executed before a notary public of the City of Manila, authorized the plaintiff bank to collect from certain persons and firms named in the said instrument any and all debts owing by them to the said Aldecoa and Company and to apply all amounts so collected and received to the satisfaction pro tanto of any indebtedness of Aldecoa and Company to the plaintiff corporation, all of which appears more particularly from a copy of the said instrument of January 30, 1907, in evidence herein as plaintiff's Exhibit "C," admitted by defendants to be correct, and which is hereby incorporated by reference into these findings.

XXI.

That by public instrument dated in Manila, Feb'y 18, 1897, the defendant Aldecoa and Company acknowledged an indebtedness to the defendant Joaquin Aldecoa in the sum of P154,589.20, a like indebtedness to the defendant Zoilo Aldecoa, and an indebtedness in

favor of the defendant Cecilia Aldecoa in the sum of P89,177.07. (See Defendants' Exhibit 2, record page 361.)

XXII.

That under date of September 30, 1908, the defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet recovered a judgment in the Court of First Instance of Manila against the defendant Aldecoa and Company for the payment to them of the sum of P155,127.31, as the balance due them from Aldecoa and Company upon the indebtedness acknowledged in the instrument above referred to as defendants' Exhibit 2.

XXIII.

That on November 30, 1907, the defendants Joaquin, Zoilo 649 and Cecilia Ibañez de Aldecoa y Palet brought an action in the Court of First Instance of the City of Manila, under No. 7493, against the present plaintiff for the purpose of obtaining a judicial declaration to the effect that the contract herein referred to as plaintiff's Exhibit "D" (record page 194), whereby Aldecoa and Company mortgaged to the plaintiff bank shares of the Pasay Estates Company, Limited, recovered from Alejandro S. Macleod, was null and void, and for a judgment that the said shares be sold and applied to the satisfaction of the judgment obtained by said Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet against Aldecoa and Company in the case referred to in the next preceding paragraph of these findings.

XXIV.

The judgment was rendered in favor of the said Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet in said case No. 7493, but said judgment, upon appeal by the Hongkong & Shanghai Banking Corporation, plaintiff herein, to the Supreme Court of the Philippine Islands, was by said court annulled and set aside by its decision dated February 26, 1912, and the mortgage of the said shares of stock to the plaintiff herein was declared to be valid.

The contention that said decision of the Supreme Court, is not res judicata as to the priority of the claim presented by cross-complainants would seem to be effectually answered by another decision of said Court in which defendants' attorneys were also of counsel, as follows:

"The law of res judicata is well settled in the United States and is laid down in a series of decisions of the Supreme Court to the effect that as between the parties to the first judgment and their privies it operates as a bar to a second action upon the same claim, not only as to issues actually in litigation but also as to all matters which might have been litigated therein. (Tanguinlay v. Quiros, 10 Phil. 360, 362.)"

That in October, 1908, the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet instituted an action in this court against the present plaintiff, the Hongkong and Shanghai Banking Corporation, for the purpose of obtaining a judgment annulling the mortgages created by them upon their interests in the properties described in the instrument herein referred to as Exhibits "A" and "B," upon the ground that the emancipation of the said defendants by their mother, the defendant Doña Isabel Palet, was void and of no effect, and that, therefore, they were minors incapable of creating a valid mortgage upon their real property at the time of the execution of the said instrument. The Court of First Instance dismissed the complaint as — the defendant Joaquin Aldecoa upon the ground that the said defendant had ratified the mortgages in question after coming of age, but entered a judgment annulling said mortgages with respect to the defendant Zoilo Ibañez de Aldecoa y Palet. Both parties appealed from this decision and the case is now pending decision in the Supreme Court of the Philippine Islands as case No. 6889 of that Court. (See defendants' Exhibit 4, record page 410.)

XXVI.

That in September, 1908, the Court of First Instance of the City of Manila rendered a judgment in case 6088 of said court, wherein the present defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet were plaintiffs and Aldecoa and Company and Isabel Palet, defendants herein, were defendants, holding that the contract of partnership by which the firm of Aldecoa and Company was constituted—in evidence herein as plaintiff's Exhibit "H," 651 record page 242—was void as to the defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet. A copy of this judgment was offered in evidence in this case as defendants' Exhibit 5 (record page 443), but was objected to by plaintiff upon the ground that it had not been a party to the case in which said judgment was rendered. The court reserved its ruling at the time but now sustains the objection of plaintiff to the admission of said judgment to which ruling defendants except.

XXVII.

That on the 31st day of December, 1906, on which date the defendant Aldecoa and Company went into liquidation, the amount of its indebtedness to the plaintiff corporation upon the overdraft created by the terms of the contract referred to herein as Exhibit "A" was P\$16,517.98 (record page 222).

XXVIII.

That neither the defendant Aldecoa & Company nor any of the defendants herein has paid or caused to be paid to the plaintiff cor-

poration the yearly partial payments due under the terms of the contract in evidence herein as Exhibit "A."

XXIX.

That from time to time the plaintiff bank has collected and received from provincial debtors of the defendant Aldecoa and Company, under the authority to that end conferred upon it by the terms of the instrument in evidence as plaintiff's Exhibit "G," various sums shown in the statement in evidence as plaintiff's Exhibit "Q" (record page 290), all of which sums so received have been placed to the credit of Aldecoa and Company and notice duly given the latter of the receipt and application thereof (testimony of Urquhart, page 621).

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XXX.

That the plaintiff bank from time to time since the date upon which the defendant Aldecoa and Company went into liquidation has received various sums of money from or for the account of Aldecoa and Company, all of which have been duly placed to the credit of that firm, including the sum of P22,352.63, the amount of a credit against one Martin Achaval assigned to the bank by Aldecoa and Company in Manila, February 8, 1907 (Exhibit "AA" record page 328), and ratified by a subsequent instrument executed in Manila March 4, 1909 (Exhibit "BB" record page 335).

XXXI.

That the defendant Aldecoa & Company has kept an account in its books with the plaintiff corporation with respect to all transactions connected with the credit granted under the terms of the contract referred to herein as Exhibit "A." The balance to the credit of the plaintiff corporation on the 31st of December, 1911, shown on the books of the defendant Aldecoa & Co., was the sum of P416,853.46. In the course of the proceedings it appeared that an error had been committed by the Bank by liquidating the interest charged to the defendants upon their overdraft quarterly instead of half yearly, as required under the terms of Exhibit "A," whereupon the necessary compensating entries having been made to correct the said error, it appears (Rec. 608) that the actual amount of the indebtedness of the defendant Aldecoa and Company to the plaintiff corporation on the 15th day of February, 1912, with interest to December 31st, 1911, only was the sum of P378,212.52, and on this date is P344,924.23.

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XXXII.

There is no competent evidence that the plaintiff bank has induced or attempted to induce any customer of the defendant Aldecoa and Company to discontinue business relations with said defendant.

XXXIII.

That inasmuch as it does not appear from the evidence introduced on behalf of the intervenor, Mr. W. Urquhart that he has any legal interest in the matter in litigation between the parties plaintiff and defendants herein, or in the success of either of the parties, or an interest against both, as required by Section 121 of the Code of Civil Procedure (Cf. *K. R. & C. R. Co. v. Fitzgerald*, 33 Neb. 137) the court considers it unnecessary to make findings with respect to the facts alleged in the complaint in intervention.

It is accordingly considered, and decreed that plaintiff have and recover from the defendant Aldecoa and Company, in liquidation, the sum of P344,924.23, Philippine currency, with interest thereon at the rate of seven per cent. (7%) per annum, compounded semi-annually, from this date until paid, and said defendant is ordered to pay said sum into court on or before the first of the next term hereof, and that in default of said payment the paroperty hereinbefore described as subject to the mortgage executed to the plaintiff by said defendant, and by the defendants Doña Isabel Palet y Gabarro, Don Joaquín Ibañez de Aldecoa y Palet, and Don Zoilo Ibañez de Aldecoa y Palet, be sold to satisfy said sum, interest and costs, namely:—

All of the right, title and interest of the defendants Aldecoa and Company in liquidation, Isabel Palet y Gabarro, Joaquín Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa in and to that certain real property more particularly described and referred to in the foregoing findings of fact, and more particularly in plaintiff's Exhibit "A," Provided, however, that said interest of said defendants shall respond for the satisfaction of said judgment only in the sums enumerated and set — in paragraphs XI and XII of said plaintiff's Exhibit "A," and in paragraph II of these findings, and only such portion of the proceeds of the sale of said interests as are herein specific shall be applied to the satisfaction of the within judgment;

All of the right, title and interest of said defendants in and to sixteen (16) shares of the capital stock of the Banco Español Filipino numbered 2356 to 2371, inclusive;

All of the right, title and interest of the defendants in and to four hundred fifty (450) shares of the capital stock of the Compañía Marítima, numbered 51 to 100, inclusive, and 301, to 700, inclusive;

All of the right, title and interest of Aldecoa and Company, in liquidation, Isabel Palet y Gabarro, Joaquín Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet in and to that real property particularly described in paragraphs XV and XVI of the findings of fact hereinabove set forth;

All of the right, title and interest of Aldecoa and Company, in liquidation, in and to that certain real property particularly described in paragraph XIV of said findings of fact;

All of the right, title and interest of the defendants herein in and

to that certain property particularly described and referred to in paragraph- XV and XVII of the said findings of fact;

655 All of the right, title and interest of the said defendants in and to the real property particularly described and referred to in paragraph XVIII of the said findings of fact;

All of the right, title and interest of the said defendants in and to the real properties particularly described and referred to in paragraph XIX of the within findings of fact;

All of the right, title and interest of the defendants in and to certain properties particularly described and referred to in paragraph XX of the within findings of fact;

And that said sale be made in accordance with the provisions of the Code of Civil Procedure relative to the foreclosure of mortgages;

It is further adjudged and decreed that if the proceeds arising from the said sale shall be insufficient to pay the amount hereinbefore found be due to the plaintiff with the interest, costs and expenses of sale as aforesaid, the Sheriff shall specify the amount of such deficiency and balance due the plaintiff in his return of said sale.

It is further considered and adjudged that plaintiff have and recover from the defendants, Isabel Palet y Gabarró, Alejandro Macleod, Joaquín Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa, jointly and severally (*mancomunaday solidariamente*), the sum of P344,924.23, Philippine currency, with interest thereon at 7 per cent per annum, payable semiannually, from August 10, 1912, until paid; provided however, that execution hereon shall not issue against the last named defendant nor be levied upon their individual property, other than as herein expressly provided for, by way of foreclosure, until the property of the defendant Aldecoa and Company, in litigation shall first have been exhausted.

656 It is further adjudged and decreed that the defendant Aldecoa and Company, in liquidation, take nothing by its counterclaim, that the defendants Joaquín Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet, and Cecilia Ibañez de Aldecoa y Palet take nothing by their cross-complaint, and that the petition of intervention filed by William Urquhart be dismissed at his costs.

Let the balance of the costs be apportioned equally among the defendants.

Manila, August 10, 1912.

By the Court:

CHARLES S. LOBINGIER, *Judge*.

(Title of the Case Omitted.)

The defendants Isabel Palet, Joaquín, Zoilo and Cecilia Ibañez de Aldecoa through the undersigned attorneys state:

I. That the findings of the decision rendered in the above entitled case are not sufficiently justified by the evidence adduced at the trial of this case.

II. That said decision is contrary to law.

Wherefore, they respectfully ask this court that after first setting aside the above said decision for the reasons above stated a new trial be granted to these petitioners upon the merits of the case.

Manila, August 17, 1912.

Respectfully submitted,
(Sgd.)

CHICOTE AND MIRANDA,
Attorneys for the Defendants.

Received copy this 17 day of August, 1912.

HAUSSERMAN, COHN AND FISHER,
p. p. CHARLES C. COHN,
Attorneys for Plaintiff.

657 Stamped: Filed on the 17 of August, 1912, 10:40 a. m.
(Sgd.) J. McMicking, Clerk.

(Title of the Case Omitted.)

The defendants Isabel Palet Joaquin Aldecoa, Zoilo Aldecoa and Cecilia Aldecoa through the undersigned counsel file their exception against the judgment rendered in the above entitled case, and ask the court that this exception be recorded in this case.

Manila, August 17, 1912.

CHICOTE AND MIRANDA,
Attorneys for the Defendants.

Received copy this 17th day of August, 1912.

HAUSSERMAN, COHN AND FISHER,
(Sgd.) p. p. CHARLES C. COHN,
Attorneys for Plaintiff.

Stamped: Filed on the 17 of August, 1912. 10:40 a. m. (Sgd.)
J. McMicking, Clerk.

(Title of the Case Omitted.)

Order.

This case comes on for hearing upon the motion for a new trial filed by defendants Isabel Palet, Joaquin Aldecoa, Zoilo Aldecoa and Cecilia Aldecoa and after consideration, of said motion,

It is hereby ordered that the same be denied.

By the court:

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., August 27, 1912.

658 (Title of the Case Omitted.)

Now come the defendants Joaquin Y. de Aldecoa, Zoilo Y. de Aldecoa, Isabel Palet de Gabarro and Cecilia Y. de Aldecoa and file

their exception against the order of this court denying the motion for a new trial prayed for by the defendants and announce their intention to file a bill of exceptions before the supreme court of the Philippine Islands.

Manila, P. I., September 4, 1912.

(Sgd.)

CHICOTE AND MIRANDA,

Attorneys for the Defendants.

Received copy, this — day of September, 1912.

HAUSSERMANN, COHN AND FISHER,

p. p. CHARLES C. COHN,

Attorneys for Plaintiff.

Stamped: Filed this 5 day of September, 1912, 3:05 p. m. (Sgd.)
J. McMicking, Clerk.

659 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

Civil No. 8519.

HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff,
versus

ALDECOA & COMPANY, in Liquidation, et al., Defendants.

*Bill of Exceptions of Isabel Palet Viuda de Aldecoa, Zoilo, Joaquin
and Cecilia Ibañez de Aldecoa.*

Be it known by these presents that in the Court of First Instance of Manila, part II, the following proceedings were held:

On January 31, 1911, a complaint was filed by the Hongkong & Shanghai Banking Corporation against Aldecoa and Company in Liquidation, Isabel Palet Viuda de Aldecoa, Zoilo Ibañez de Aldecoa, Joaquin Ibañez de Aldecoa, Alejandro Macleod and William Urquhart as liquidator of Aldecoa and Company, which complaint was later on amended so as to improve as a party defendant in addition to those above mentioned, Cecilia Ibañez de Aldecoa, said amended complaint being as follows:

660 Heading and Title.

Now comes plaintiff in the above entitled case and as a cause of action against the above named defendants, alleges:

I.

That plaintiff is at present and has at all dates mentioned in this complaint been a Banking Corporation duly organized and existing in accordance to and by virtue of the laws of the British Colony of

Hongkong, duly licensed to engage in business in the Philippine Islands.

II.

That at all times mentioned in this complaint the defendant Aldecoa and Company was a general mercantile partnership (*sociedad mercantil regular colectiva*) duly organized and existing under the laws of the Philippine Islands, having its central office in the City of Manila, Philippine Islands; that on December 31, 1906, by reason of the expiration of the term established in the articles of partnership for its duration, the firm of Aldecoa and Company entered into liquidation, Mr. William Urquhart having been duly authorized to take charge of the liquidation of said partnership.

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III.

That at all dates mentioned in this complaint defendants Isabel Palet viuda de Aldecoa, Alexander Macleod, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, were general and industrial partners in the said firm of Aldecoa and Company.

IV.

That on February 23, 1906, the defendant Aldecoa and Company and defendants Doña Isabel Palet widow of Aldecoa, Don Zoilo Ibañez de Aldecoa and Don Joaquin Ibañez de Aldecoa, executed in favor of plaintiff corporation an instrument of acknowledgment of debt and mortgage; of which instrument there is a copy attached to this complaint marked Exhibit "A" for the purposes of identification, and made part of this complaint.

V.

That afterwards, to wit: on or about March 23, 1906, defendants Isabel Palet widow of Aldecoa, Zoilo Ibañez de Aldecoa and Joaquin Ibañez de Aldecoa, in order to correct the erroneous description of one of the pieces of property mortgaged to the plaintiff bank by virtue of document Exhibit "A," and in regard to defendant Isabel

662 Palet in order to extend to another piece of property of her own the mortgage security executed by her by virtue of Exhibit "A," executed in favor of the plaintiff corporation a public instrument a copy of which is attached to this complaint marked Exhibit "B" and made part hereof.

VI.

That afterwards, to wit: on December 22, 1906, the defendant Aldecoa and Company, in order to increase the security given to the plaintiff bank executed in favor of said bank a public document, a copy of which is attached to this complaint marked Exhibit "C" and made part hereof.

VII.

That afterwards, to wit: on the 31st day of March, 1907, defendant Aldecoa and Company, in order to increase the security given to the plaintiff bank executed in favor of said bank a public instrument, a copy of which is attached to this complaint marked Exhibit "E" and made part hereof.

VIII.

That afterwards, to wit: on January 30, 1907, defendant Aldecoa and Company, in order to increase the security given to the plaintiff bank executed in favor of said bank a public instrument, a copy of which is attached to this complaint marked Exhibit "G," and made part hereof.

IX.

That afterwards, to wit: on March 31, 1907, defendant Aldecoa and Company, in order to increase the security given to the plaintiff bank executed in favor of said bank a public instrument, a copy of which is attached to this complaint, marked Exhibit "F" and made part hereof.

X.

That afterwards, to wit: on August 30, 1907, defendant Aldecoa and Company, in order to increase the security given to the plaintiff bank executed in favor of said bank a public instrument, a copy of which is attached to this complaint, marked Exhibit "D" and made part hereof.

XI.

That by virtue of the agreement contained in a contract marked Exhibit "A" attached to this complaint and made part hereof, the defendant firm Aldecoa and Company was obliged to pay to plaintiff corporation the annual sum of P50,000.00 on account of its debt in account current during the years 1906, 1907, 1908, 1909 and 1910, until such debt should become reduced to the sum of P225,000.00 Philippine currency on January 1st, 1911.

XII.

That neither the defendant Aldecoa and Company nor any other of the defendants Isabel Palet, Alejandro Macleod, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa, nor any other person in their name has paid the plaintiff corporation the amount of money which said defendant Aldecoa and Company was obliged to pay by virtue of the agreement contained in said document Exhibit "A"; and said firm of Aldecoa and Company is at present indebted to the plaintiff corporation in the sum of P412,-504.89, which amount is at present due and payable in full.

Wherefore, plaintiff corporation asks this Court to render judgment in its favor and against the defendants sentencing said defendants to pay jointly and severally the said amount of P412,504.89 together with the interest thereon at the rate of seven per cent (7%) per annum, and the costs of this action; and that in case the said sum should not be satisfied by said defendants or any of them on
 665 or before the 1st day of the term of this Court following that in which the judgment has been rendered, then to proceed in the manner established by the law of Civil Procedure now in force, to the sale on public auction of the real and personal property mortgaged in favor of plaintiff corporation to secure the obligation of the defendant Aldecoa and Company, and that the proceeds of said sale be applied to the satisfaction of said judgment, and that plaintiff corporation be granted any other remedy which the Court may deem just and equitable.

Manila, P. I., January —, 1912.

HAUSSERMANN, COHN & FISHER,

P. P. ———.

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EXHIBIT "A."

Deed of Credit.

Know all by these presents, that we Don Joaquin Ibañez de Aldecoa y Palet, merchant 21 years of age, single and resident of this capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital Don Enrique Barrera y Caldes, on July 31st, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to; Don Zoilo Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, through an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31st, 1904, assisted by and with the consent of my said mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as Attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow
 of Señor Don Zoilo Ibañez de Aldecoa, by virtue of an instrument ratified and executed before the Notary Public of
 667 the Villa y Corte de Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on December 31st, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to legally execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers

conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, all of them, parties of the first part; and Mr. Harry Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the Hongkong and Shanghai Banking Corporation by virtue of the representation and powers conferred to me by the letter of Attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco Asis Caballero y Mediano, Vice-Consul of Spain for the British Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul for the same Colony, and registered on February 26, 1898, at sheet No. 10, bis, inscription No. 1, Volume 2 of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part, hereby make it known:

I. That Don Joaquin, Don Zoilo, and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in undivided equal shares, at the rate of one third each, of the following property, to wit:

A. Urban Property.—A lot with the camarine of strong materials with roof of galvanized iron built within its area, situated in Calle Jolo of the district and Judicial Section of Binondo and North demarcation of the Registry of the Property of this Capital and designated at present by the Government Police No. 6. It is bounded on the right of its entrance by house and lot No. 4 belonging to the heirs of Don Jose Maria Fabie; on the left by house and lot No. 8 of Don Jose Varela y Miciano, and on the back by Binondo River. The whole of the lot occupies a superficial area of 1308 square meters and 23 decimeters, of which 393 square meters and 58 decimeters, are covered by the building. This property is registered at folios 181, 186 and 187, Volumes 6 and 48 of the Registry of property of this Capital; books 3 and 13 of the Section of Binondo, property No. 111, inscriptions Nos. 5, 6 and 7.

Fol. 188 vto. Vol. 13, Binondo Section, and 48 of the Archive, property No. 111 duplicate, Inscription 8th.

II. That the Excelentísima Señora Doña Isabel Palet y Gabarro, and her children Don Joaquin, Don Zoilo and Doña Cecilia Ibañez de Aldecoa y Palet, are joint owners in equal undivided shares, at the rate of one fourth each, of the following property, to wit:

B. First.—Urban property, consisting of masonry camarine with iron roof, called "La Prensa" because it contains a hemp press with the lots on which it is built, said property being situated in Calle Barraca of the district of Binondo, designated by police No. 5 and bounded on the right of its entrance by one of the three properties to wit: that designated with No. 7 of the same street, on the left by a lot without number which is the third of the three

properties in question and on the back by the lot without number of Calle Carenero belonging to the Hacienda; its superficial area measures 1875 square meters with 84 square decimeters, of which the building occupies an area of 1553 square meters and 74 square centimeters. This property is registered at folios 70, 72, 73 and 190, Volumes 6 and 48, Book 3 of Section Binondo, property No. 91, annotations letters C, Ch and E.

Fol. 191 vto. Vol. 13, Section of Binondo and 48 Archive, property No. 92 duplicate, Inscription 7.

C. Urban property, consisting of a house and camarine or bodega which is an accessory thereof, of strong materials with the lot on which they are built, situated in Calle Barraca of the district of Binondo and designated at present with No. 7. It is bounded on the right of its entrance by house and lot No. 9 now belonging to Doña Maria C. Vales y San Juan, formerly of the late Don Vicente Vales, on the left by camarine and lot No. 5 hereinbefore described and on the back by lot without number of Calle Carenero of the Hacienda, its superficial area being 564 square meters and 94 square centimeters, of which the building occupies 499 meters and 69 centimeters. This property is registered at folios 76, 78, 79 and 189, Volumes 6 and 48 Book 3 of Binondo Section, property No. 92, annotations letters C, Ch and E.

Fol. 200, Volume 13 Section Binondo and 48 Archive, property No. 91 duplicate, Inscription 7th.

D. Urban property, consisting of a strong material camarine built on its own lot, situated in Calle Barraca of the district of Binondo, without police number as yet. It is bounded on the right of its entrance by house No. 5 first described under letter B, on the left also by house No. 5 of the Presses and on the back by lot without number of Calle Carenero belonging to the Hacienda. It has a superficial area of 1153 square meters and 26 square centimeters, of which the building occupies 606 square meters and 16 square centimeters. This property is registered at folios 82, 84, 85 and 202, Volumes 6 and 48 Book 3 of Binondo Section, property No. 93, annotations letters C, Ch, and E.

Fol. 293 vto. Volume 13, Section Binondo and 48 Archive, Property No. 93 duplicate, Inscription 7th.

E. Urban property, consisting of nine houses and their out-buildings of strong materials with the large lot on which they are built situated and fronting for the effects of this description on Calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Tuñon and of Don Segundo Javier; on the left by Calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8,070 square meters 76 centimeters also square.

Fol. 210, Volume 3, Book 8, Malate Section, property No. 384, annotation letter B.

III. That the Hongkong and Shanghai Banking Corporation had granted to the firm of Aldecoa and Company a certain credit in current account to attend to its mercantile operations, of which use had been made up to this date, and in order that it may appear in due form as well as to make clear the conditions stipulated to that effect, we execute the present instrument by virtue of which we solemnly state:

IV. That the Hongkong and Shanghai Banking Corporation shall keep open in favor of the general mercantile partnership, Aldecoa and Company, a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) Philippine currency part of which have already been used.

V. That the debtor firm of Aldecoa and Company secures the payment of its credit in favor of the Hongkong and Shanghai Banking Corporation during the whole period of existence of this agreement with all the hemp bought by the firm or sent to the same for sale by its debtors or other persons who may be in similar case, and therefore, the general mercantile partnership of Aldecoa and Company binds itself to deposit with the Hongkong and Shanghai Banking Corporation all the amounts derived from the sales of said product in Manila, said firm Aldecoa and Company being, however, authorized to withdraw these deposits by issuing checks against its current account in order to attend, with the amounts so drawn, to the development of its business in accordance with the continuation of its credit opened and acknowledged in the present agreement and without prejudice to the reduction of said credit in the form hereinafter stipulated.

VI. That the debtor Aldecoa and Company binds itself to send to the Hongkong and Shanghai Banking Corporation in Manila, at the end of each month a written notice giving a detailed and complete statement of the quantity of hemp which said company has on hand in Manila and in the provinces.

VII. The credit in current account which the Hongkong and Shanghai Banking Corporation has opened in favor of the general mercantile partnership, Aldecoa and Company, shall continue in force during the term of this agreement, provided, that said debtor company shall continue to make use of said credit through checks issued against the said Bank, with the sole object of applying those funds to the purchase of hemp, rice, and other products related to the object of said partnership, and subject to the obligation on the part of the debtor, Aldecoa and Company, to reduce its debit balance down to the sum of four hundred and twenty-five thousand pesos (P425,000) on or before December 31, 1906, and to continue reducing said debit balance at the rate of at least fifty thousand pesos (P50,000) per year until said debit balance be reduced to the sum of two hundred and twenty-five pesos (P225,000) Philippine Currency, on January 1, 1911, on which event, the creditor Bank reserves to itself the right to enter into new stipulations with the debtor company for the total payment of its debt, provided, that the yearly instalments for the reduction of the capital shall begin

to run from the 1st day of January 1906, so that the first fifty thousand pesos (P50,000) Philippine currency shall be paid on December 31, 1906, and so on until this stipulation is complied with, that is to say, for the sake of clearness:

(a) Up to and until December 31, 1906, the credit shall be of four hundred and seventy-five thousand pesos (P475,000) Philippine Currency.

(b) Up to and until December 31, 1907, the credit shall be of four hundred and twenty-five thousand pesos (P425,000) Philippine Currency.

(c) Up to and until December 31, 1908, the credit shall be of three hundred and seventy-five thousand pesos (P375,000) Philippine Currency.

(d) Up to and until December 31, 1909, the credit shall be of three hundred and twenty-five thousand pesos (P325,000) Philippine Currency.

(e) Up to and until December 31, 1910, the credit shall be of two hundred and seventy-five thousand pesos (P275,000) Philippine Currency.

676 So that on January 1, 1911, the credit shall not be for a greater sum than two hundred and twenty-five thousand pesos (P225,000) Philippine Currency.

VIII. In the event the debtor company should succeed in reducing the credit existing in its favor in the provinces by full or partial payment to said debtor company by its debtors the amount which this company might receive for this reason, shall be paid into the Hongkong and Shanghai Banking Corporation on account of its debt as additional payments to those agreed upon, in the foregoing clauses.

IX. The said credit in current account shall earn in favor of the creditor Bank a reciprocal interest of seven per cent (7%) to be liquidated and payable at the end of every six months.

X. The firm of Aldecoa and Company guarantees the faithful and exact compliance on its part with all the obligations entered into by virtue of this document with the pledge of sixteen (16) shares of the capital stock of the Banco Español Filipino of this City which it owns, numbered from 2,356 to 2,371 inclusive and 450 shares

677 which it also owns of the capital stock of the Sociedad Anónima Compañía Marítima marked with Nos. 51 to 100 inclusive and 301 to 700 also inclusive, said shares being delivered to the Hongkong and Shanghai Banking Corporation for said Bank to keep the same in its possession as a deposit and with the diligence of an honest and reasonable man.

XI. We, Don Fernando Zobel y de Ayala in the name and on behalf of Doña Isabel Palet y Gabarro, Don Joaquin Ibañez de Aldecoa and Don Zoilo Ibañez de Aldecoa, guarantee furthermore the exact and faithful compliance with all the obligations contracted by the firm of Aldecoa and Company, with the voluntary special mortgage which we now constitute on the shares or interest which we respectively have in the property above described, the interest which we have on the property described with letter "A" being security for

the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five centavos (P13,847.75) Philippine Currency of the principal with the interest thereof; that which is described with the letter "B" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and interest thereof; that described under letter "C"

678 for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and the interest thereof; that described under letter "D" for the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03) Philippine Currency of the principal and interest thereof; and that described under letter "E" for the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (P221,149.98) Philippine Currency of the principal and the interest thereof; each one of said pieces of property being also responsible in the sum of five hundred pesos (P500) for costs and judicial expenses, the balance of seventy-three thousand five hundred and ninety-eight pesos and eighteen centavos (P73,598.18) Philippine Currency being secured by the shares of stock referred — in the preceding paragraph and which are given in pledge.

XII. That by common agreement all the contracting parties fix the value of the interest in the mortgaged property as follows, to wit: that in the property described under letter "A" in the sum of thirteen thousand eight hundred and forty-seven pesos and seventy-five centavos (P13,847.75); that in the property described under letter "B" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that in the property
679 described under letter "C" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); that in the property described under letter "D" in the sum of fifty-five thousand four hundred and sixty-eight pesos and three centavos (P55,468.03); and that in the property described under letter "E" in the sum of two hundred and twenty-one thousand one hundred and forty-nine pesos and ninety-eight centavos (221,149.98); which respective values shall be the upset price for the first auction which, in case of breach of the present obligation, must take place in accordance with the existing laws and those which in the future might be promulgated on the premises waiving, therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

XIII. It is a stipulated condition that the creditor Bank shall not have the right to ask for the sale of the property above described to reimburse itself with the proceeds thereof of the total amount of the debt of the firm of Aldecoa and Company, until after the term of five (5) years, fixed for the complete payment of the same, shall have expired; being restricted in the meantime to receive from the debtor company the yearly sum of fifty thousand pesos (P50,000) which has been fixed for the partial yearly payment, and
680 which is secured by the shares of stock above enumerated, even if the firm of Aldecoa and Company should enter in its

period of liquidation before the expiration of the said five (5) years, since to this effect it is stipulated and agreed that the said term of five (5) years shall not be reduced to a lesser period of time for the mere fact that the firm of Aldecoa and Company goes into or places itself in liquidation either by reason of the expiration of the term of partnership or by reason of being convenient to its interests and also whether said liquidation shall be carried privately or in an official or public manner, for all of which the debtor Company is from now empowered without the term fixed in this document for the payment of its debt, being thereby diminished.

XIV. Mr. Harry Davies Campbell Jones in the name and on behalf of the Hongkong and Shanghai Banking Corporation does accept this document as to each and every part thereof, declaring to have received the sixteen (16) shares of stock of the Banco Español Filipino and the four hundred and fifty (450) shares of stock of the Sociedad Anonima Compañia Maritima to which reference is made in paragraph X of this document, for said Bank which I represent, to preserve and keep the same as a deposit while the present obligation is in force.

681 XV. Both contracting parties submit themselves to the jurisdiction of the Judges and Courts of this Capital for the settlement of all judicial questions which might be raised by reason of the non-compliance of this contract, expressly waiving, therefore, the jurisdiction of the forum of their respective domiciles.

XVI. That both contracting parties bind themselves to execute at any time whatever documents may be necessary to make effective or to perfect the corresponding rights and obligations which by this document it is intended to acknowledge and establish and which may be necessary for the registration of the mortgages or other obligations herein granted.

In witness whereof, we sign these presents in triplicate in Manila, this 23rd day of February 1906.

For the Hongkong and Shanghai Banking Corporation,

(Sgd.)

J. D. C. JONES, *Manager.*

(Sgd.)

ALDECOA & CO.

(Sgd.)

FERNANDO ZOBEL.

(Sgd.)

ZOILO I. DE ALDECOA.

(Sgd.)

JOAQUIN I. DE ALDECOA.

Signed in the presence of:

(Sgd.) ANTONIO HIDALGO.

(Sgd.) JOSE MA. ROSADO.

682 UNITED STATES OF AMERICA,

City of Manila, Island of Luzon,

Philippine Islands, ss:

In the City of Manila this 23rd day of February, 1906, before me personally appeared Don Joaquin Ibañez de Aldecoa y Palet; Don Zoilo Ibañez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, Don Alejandro Macleod and Mr. Harry Davies Campbell

Jones, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Messrs. Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, Fernando Zobel y de Ayala and Harry Davies Campbell Jones, exhibited to me their respective certificates of Cedula Nos. A-1,330,177, A-1,330,173, A-1,330,174, and A-1,325,201, issued by the Collector of Internal Revenue in this City the 25th of January, 25th of January, 25th of January and 10th of January, 1906; Mr. Alejandro Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentiond.

[NOTARIAL SEAL.] (Sgd.) JOSE MA. ROSADO,
Notary Public.

My commission expires on December 31, 1906.

Filed at 11:35 a. m. on this date according to entry No. 230, page 98, Volume 11 of the Diary.

Manila, February 28, 1906.

(Sgd.)

CLAUDIO GABRIEL.

Fees: P0.75—No. 1 Ar.

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EXHIBIT "B."

Know all by these presents, that we, Don Joaquin Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother, Doña Isabel Palet y Gabarro, by virtue of an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31, 1904, and assisted by and with the consent of my mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter referred to; Don Zoilo Ibañez de Aldecoa y Palet, merchant, 21 years of age, single and resident of this Capital, emancipated by voluntary concession of my mother Doña Isabel Palet y Gabarro, through an instrument executed before the Notary Public of this Capital, Don Enrique Barrera y Caldes, on July 31, 1904, assisted by and with the consent of my said mother, by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala, hereinafter mentioned; Don Fernando Zobel y de Ayala, merchant, of lawful age and resident of this Capital, as attorney in fact and lawful representative of Doña Isabel Palet y Gabarro, widow of Señor Don Zoilo Ibañez de Aldecoa, by virtue of an instrument ratified and executed before the Notary Public of the Villa y Corte de Madrid, Spain, Don Jose Criado y Fernandez Pacheco, on December 31, 1905, a copy of which has been duly authenticated by the Vice-Consul of the United States in Madrid, by which document I am authorized to legally
684 execute this document; Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital,

as managing partner with the power to sign the firm's name, of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31, 1896, and modified by another instrument dated February 20, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, all of them, parties of the first part, and Mr. Harry Davies Campbell Jones, merchant, of lawful age, married and resident of this City, as Agent of the Hongkong and Shanghai Banking Corporation by virtue of the representation and powers conferred to me by the letter of attorney No. 1 executed and ratified on July 31, 1897, before Don Francisco de Asis Caballero y Mediano, Vice-Consul of Spain for the British Colony of Hongkong, a copy of which has been issued on August 4th, of the same year by Don Jose Navarro, Spanish Consul for the same Colony, and registered on February 26, 1898, at sheet No. 10 bis, inscription No. 1, Volume 2 of the Book of Partnerships of the Mercantile Registry of this City, the party of the second part, hereby make it known:

685 I. That by virtue of an instrument executed in this City before the Notary Public thereof Don Jose Ma. Rosado on the 23rd day of February, 1906, the Hongkong & Shanghai Banking Corporation declared to have and to keep, open in favor of the general mercantile partnership Aldecoa and Company a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) Philippine currency, under the terms and conditions set forth in said instrument.

II. That to guarantee the payment of the above mentioned credit the Most Excellent Señora Doña Isabel Palet y Gabarro, and her children Don Zoilo and Don Joaquin Ibañez de Aldecoa y Palet executed in favor of the Hongkong & Shanghai Banking Corporation a mortgage of the interest which they have respectively on several pieces of property amongst which is included a certain property which is described as follows:

E. Urban property, consisting of nine houses and their outbuildings of strong materials with the large lot on which they are built situated and fronting for the effects of this description on calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by the property of the Clergyman Don Silvino Lopez Tuñon and of Don Segundo Javier; on the left by calle San Antonio Abad and on the back by the sea; the area of the whole lot measuring 8070 square meters 76 centimeters also square.

686 III. That there being an error in the description of the property above referred to, wherein it is stated that there are nine buildings thereon where in fact there are only eight, we execute the present document by virtue of which, we mostly solemnly agree:

IV. That the foregoing described property on which the most Excellent Señora Doña Isabel Palet y Gabarro and her children Don Zoilo and Don Joaquin Ibañez de Aldecoa have executed a mortgage as aforesaid on the respective shares of interest which they have therein, that is to say, a share equal to one-fourth each, is described as follows:

E. Urban property, consisting of eight houses and their out-buildings of strong materials with the large lot over part of which they are built, situated by its front in calle Real of the suburb of Malate, judicial district and demarcation of the Registry of Property of this City. Bounded on the right of its entrance by properties of the Clergyman Don Silvino Lopez Tuñon and Don Segundo Javier; on the left by calle San Antonio Abad and on the back by the sea; the whole lot measuring a superficial area of 8870 square meters and 76 centimeters also square.

V. That the property above described shall be liable in regard to the interest which we mortgage for the sum of two hundred
687 and three thousand nine hundred and eighty-five pesos and seventy-nine centavos (P203,985.79) of the principal above stated and the interest thereof, besides, the sum of five hundred pesos (P500) Philippine currency for costs and expenses in the event of litigation.

VI. That Doña Isabel Palet y Gabarro represented by me, Don Fernando Zobel y de Ayala, in order to enlarge the guarantee offered for the credit above referred to by this same document, execute a voluntary special mortgage on the following property:

F. Urban property, consisting of a house of strong materials with galvanized iron roof and the lot on which it is built, designated at present with No. 561, situated by its front in calle Real of the suburb of Malate judicial district and demarcation of the Registry of Property, of this City. Its front measures 20 meters; on the right of its entrance 42 meters 50 centimeters; on the left 30 meters and 20 centimeters; and on the back on a straight line running from North to South 16 meters and 20 centimeters, and on the back on a straight line running from North to South 16 meters and 20 centimeters, on a line running from East to West 12 meters and 85 centimeters, both sides forming an acute angle in the direction from East to West and in the third line which with the former forms another angle and closes the poligone in a South to North di-
688 rection, 5 meters and 16 centimeters, its total area measuring

741 square meters with 72 square centimeters. Said property is bounded on the right of its entrance by a lot without number owned by Anacleto Vitan; on the left by the Plaza de Polvorin; and on the back on the side which measures 16 meters with 20 centimeters and 12 meters and 85 centimeters respectively, by the lot belonging to Doña Agapita de la Cruz, and on the side which measures 5 meters and 16 centimeters by a house and lot without number of the Excelentísimo Señor Don Zoilo Ibañez de Aldecoa y Aguirre.

VII. That by common agreement the contracting parties herein determine that the property described under letter "F" shall secure the payment of the sum of twenty two thousand eight hundred and

eighty-five pesos and sixty centavos (P22,885.60) Philippine currency of the principal of the credit above referred to, in other words, that which is stated in the said deed of February 23, 1906, together with the interest thereof, besides, the sum of five hundred pesos (P500) Philippine currency for costs and expenses in the event of litigation.

VIII. That by common agreement all the contracting parties fix the value of the interest in the property above mortgaged as follows: that marked with letter "E" in the sum of two hundred and three thousand nine hundred and eighty-five pesos and seventy-five centavos (P203,985.75) and that described under letter "F" in the sum of twenty-two thousand eight hundred and eighty-five pesos and sixty centavos (P22,895.60) which value shall be the upset price for the first auction which, in case it becomes necessary in accordance with the stipulations contained in the deed of February 23, 1906, above referred to, may have to take place in accordance with the existing laws and those which in the future might be promulgated on the premises, waiving, therefore, any other valuation of the interest on the said property, and any right of action which they might have towards this end.

IX. All the contracting parties herein declare that this document is only an addition to the said deed of February 23, 1906, of which it is made part, since we declare in force each and every one of the parts of that deed without any other alterations than those contained herein.

Under the foregoing terms and conditions we execute the present document which we bind ourselves to keep and comply with faithfully and fully in each and every part thereof, in the most solemn form under the Law.

In witness whereof, we sign the present instrument in triplicate in Manila, this 23rd day of March, 1906.

(Sgd.)

JOAQUIN I. DE ALDECOA.

For the Hongkong & Shanghai Banking Corporation,

(Sgd.)

H. D. C. JONES.

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(Sgd.)

ZOILO I. DE ALDECOA.

(Sgd.)

ALDECOA Y CIA.

(Sgd.)

FERNANDO ZOBEL.

Signed in the presence of:

(Sgd.) POT. VILL. BERNABÉ.

(Sgd.) B. PABALAN.

UNITED STATES OF AMERICA,

City of Manila, Island of Luzon,

Philippine Islands, ss:

In the City of Manila this 23rd day of March, 1906, Before me personally appeared Don Joaquin Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet, Don Fernando Zobel y de Ayala, and Don Harry Davies Campbell Jones, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Said Don Joaquin

and Don Zoilo Ibañez de Aldecoa, Don Fernando Zobel and Mr. Harry Davies Campbell Jones, exhibited to me their respective certificates of cedula Nos. A-1,330,177, A-1,330,173, A-1,330,174 and 1,324,201, issued by the Collector of Internal Revenue of this City, the first three on the 25th of January, 1906, and the last on the 10th of January, 1906, Mr. Macleod not having done so on account of being exempt from the same being over 60 years of age.

In witness whereof, I have hereunto set my hand and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.] (Sgd.)

JOSE MA. ROSADO,
Notary Public.

My commission expires on December 31, 1906.

(Two documentary seals of the Internal Revenue: One of P3.00 and another of P1.00.)

The above document has been registered in regard to the property designated with letter "F" at folio 137 bis, Volume 3, Book 2, Malate Section, property No. 93, duplicate, Fifth Inscription. Manila, April 28, 1906.

[Seal Registry of Titles, City of Manila, P. I.]

(Sgd.)

CLAUDIO GABRIEL.

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EXHIBIT "C."

Know all by these presents, that we, Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name, of the general mercantile partnership of "Aldecoa y Compañía," of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31, 1896, and modified by another instrument dated February 20, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, the party of the first part; and Mr. A. G. Stephen, merchant, of lawful age, married and resident of this Capital, as agent of the "Hongkong and Shanghai Banking Corporation," established in Manila, the party of the second part.

Make it known:

I. Whereas, by a written public instrument executed before the Notary Public of the province of Albay, Don Lorenzo E. Villareal, on October 11, 1906, Don Salustiano Zubeldia guaranteed Messrs. Aldecoa & Company of this City, the payment of the balance owed by him to this firm, which document literally copied is as follows:

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"Know all by these presents: that I, Salustiano Zubeldia, Spaniard, married to Doña Ignacia Echevarria, a merchant of Tabaco, resident of Tabaco, province of Albay, Philippine Islands, hereby state and make known:

1. That I acknowledge the balance appearing against me in my current account with Messrs. Aldecoa and Company in Manila as per statement of account closed on September 30, of the present year 1906.

2. That I work as consignor of said gentlemen and I am bound to deliver them all the hemp gathered by me, to sell it on commission as per agreement.

3. That in order to guarantee the balance which I mention in the final paragraph, I mortgage expressly and specifically my real estate, personal property and credits against those persons who buy hemp from me and who are solvent, all of which are described as follows:

694	(a) A store with press and walls of masonry and galvanized iron, and roof of galvanized iron, its area being 1367.51 square meters, its value being	P38,380.93
	(b) A house of strong materials with galvanized iron roofs and masonry walls, its cost being	17,901.04
	(c) A lot where the two foregoing premises are situated, bounded on the N. by calle Quinali and by lot of the heirs of Ceferino Aramburu; on the E. by the same heirs and Mariano Villanueva; on the S. by Mariano Villanueva and Manuel Zalvidea; and on the W. by Modesto Borromeo and by calle Quinali, the area of the same measuring 2501.49 square meters and its purchase value being	2,000.00
	(d) On said lot and on the other side of calle Quinali there is a stone camarine for the deposit of salt and kerosine, the cost of which is	P1,035.23

(e) Merchandise:

275	bales with 550 piculs of hemp of the approximate value of	10,450.00
30,000	rattan rope for packing	120.00
	10,500 packing mats	420.00
695	690 sac-s of Saigon rice	P4,097.63
	4 cases of La Rosa cigarettes of 3,000 cts.	532.84
	1 case " " " " of 3,300 cts.	151.67
109	sac-s of salt	101.37
90	cases of kerosine Dragon brand	307.80
50	piculs hemp, loose	925.00
	Merchandise consisting in hemp and other articles of immediate sale in the Agency of Bacacay	700.00
id.	id. id. Agency of Tiui	4,000.00

2 large cascos for loading and unloading cargo, actual value	1,600.00
The barge San José, its value.....	2,000.00

Solvent debtors or hemp purchasers who have,
most of them, their property mortgaged:

Chinaman Go Tiango.....	4,862.05
Maximino Chaves	692.44
Dionisio Templado	9,063.42
Vicente Belmonte	1,199.84
Diego Palomo	331.60
Chinaman Conga	1,589.94
Chinaman Ang Tungco.....	600.00
696 Pedro Bargas	5,869.75
Chinaman Sy Quingco.....	16,836.23
Emigdio Matias	19,136.07
Manuel Gonzalez	909.22
Ramon Morales	5,348.87
Sabina de Santillan	1,649.32
Venancio Canofin	499.80
Mariano Agunday	274.00
Sixto Almonte	575.45
Pablo Belen	826.13
Pedro Almonte	904.00
Jose Asi	284.45
Jorge Salchen	471.00
Chinaman Antua	270.73
Simeon Riosa	197.00
Alejandro Quitasol	580.62
Felipe Coetesano	173.95
Paulino Matias	438.79
Pablo Escarella	2,940.92
Chinaman Uy Angco	1,466.57
" Dy Cuico	484.27
Balbino Belarmino	450.00
Perfecto Murillo	986.25
Chinaman Uy Baico	1,894.38
Carlos Lama	537.00
697 Vicente Colingo	616.38
Laureano Berces	P6,009.56
Chinaman Go Paco	139.00
" Dy Picco	831.30
Casimiro Conejero	1,385.82
Toribio Cabiles	700.00
Anselmo Bonagua	573.25
Chinaman Chua Fiangco	253.13
Maria Matias	173.94

P177,769.93

4. That the titles of the above described property are in the Registry of Property of this province of Albay, Philippine Islands, for the registration thereof and as soon as the same are returned to me, I shall send them to Aldecoa and Company in Manila for the purposes of this my deed.

5. That the said property is free from all charges or encumbrances.

6. And last. That I guarantee the solvency of my hemp buyers mentioned in this document.

In witness whereof, I sign these presents in Tabaco, this tenth day of October, nineteen hundred and six.

(Sgd.)

SALUSTIANO ZUBELDIA.

Signed in the presence of:

(Sgd.) SERAPIO ECHEVARRIA.

698 (Sgd.) RAFAEL BABIJES.

UNITED STATES OF AMERICA,

Philippine Islands, Province of Albay:

In the Municipality of Tabaco in the said province, this eleventh day of October, nineteen hundred and six, A. D., I, the Notary Public of this Municipality Don Lorenzo E. Villareal, having been invited to the residence of Don Salustiano Zubeldia, said Salustiano Zubeldia personally appeared before me and I certify to know him to be the person who executed the above instrument and ratified the same to be an act of his own free will and deed. He exhibited to me his cedula No. 833,020 issued by the Municipal Treasurer of Tabaco on the 19th day of January, 1906. In witness whereof, I place my official seal and signature on the date above mentioned.

[HIS NOTARIAL SEAL.]

(Sgd.)

LORENZO E. VILLAREAL,

Notary Public until December 31, 1907.

The property described which in the foregoing deed is marked with the letters (a), (b), (c) and (d), is described as one single piece of property as follows:

Property situated in Quinali street of the town of Tabaco, province of Albay, Philippine Islands. It is bounded on the North by Quinali street and by a lot of the heirs of Don Ceferino Aramburu; on the East by the same heirs and Mariano Villanueva; on the South by Mariano Villanueva and Don Fausto Ormachea,

699 and on the West by Modesto Borromeo and by Quinali street.

The point marked — in the pian has been taken as reference point, being the intersection of calle San Juan or Rizal and the N. W. angle of calle Quinali. From this point in a Southwesterly direction 22 dgs. 0' W., and along a line 23.50 meters long the line — 1. it reaches the point marked with the first No. 1 of the plan; from point 1 in a Southwesterly direction the line 1-2. it reaches point 2, on a course 38 dgs. 30' W., being 52.20 meters long; from point 2 the line

2-3, follows a Southwesterly direction on a course 35 dgs. 00' E., 54.50 meters long; from point 3 starts line 3-4, on a Southwesterly direction on a course of 62 dgs. 00' E., 64.60 meters long; from point 4 starts line 4-1, in a Northwesterly direction on a course 45 dgs. 00' W., 78.00 meters long and closes the polygon. The superficial area inclosed within polygons 1, 2, 3, and 4 measure 3,869 square meters distributed as follows: Press, camarine and hemp deposit 1,367.51 square meters and the rest, that is to say, the lot, 2,501.49 square meters. The property is composed of a building land bounded on the East by a bamboo fence and on the North by a piece of masonry wall belonging to the adjoining owner Mr. Aramburu; the rest, that is to say, the greater part of the land 700 lacking of any kind of enclosure. Within the lot a one-floor camarine of strong materials has been built consisting of one single body and a small abutting part, measuring: the main body 46.70 meters long by 29.30 meters wide; and the abutting part 5.40 meters long by 1.90 meters wide. It has one single floor; the walls being of masonry up to a height of 1.50 meters, except the part destined to office where all the wall is of masonry; the rest of the same as well as the roof being of galvanized iron. On the front, that is to say, on its North side it has a shed along the front being 4.60 meters wide; and another on the East side of the same being 4.50 meters wide and 39.00 meters long, which does not run all along the East side but only reaches up to the abutting part of the building which is devoted to the offices. It has two doors on the front and 4 on the East, all of them opening on the lot under the sheds, being unnumbered. Its construction is solid and of the current style in the locality, for this kind of buildings.

II. Whereas by an instrument executed in this City, before the Notary Public of the same, Don Jose Ma. Rosado on February 23, 1906, the Hongkong and Shanghai Banking Corporation declared to have and keep open in favor of the firm of Aldecoa and Com-
701 pany of this City, a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) Philippine currency under the terms and conditions and the guaranties contained in said instrument and in another one additional to the latter, executed on March 26, 1906, before the same Notary, Mr. Rosado.

III. Whereas, the contracting parties herein have agreed to amplify the security contained in the above mentioned instruments dated February 23, and March 23, 1906, with the mortgage of rights of mortgage executed in its favor on the properties described in this document under the letters (a), (b), (c), and (d), which are described as one single property in the manner hereinbefore done.

Therefore, the contracting parties herein stipulate, agree and covenant as follows:

That the credit in current account which the Hongkong and Shanghai Banking Corporation has granted to the firm of Aldecoa and Company for the sum of four hundred and seventy-five thousand pesos (P475,000) under the terms contained in the instruments dated February 23 and March 23, 1906, and whatever other amount that

said Banking establishment may have granted to Messrs. Aldecoa and Company on said current account, exceeding the said amount of four hundred and seventy-five thousand pesos (P475,000) Philippine currency, is furthermore secured with the special voluntary mortgage which the firm of Aldecoa and Company executes on its right of mortgage on the property marked with letters (a), (b), (c), and (d), which is mentioned in the document hereinbefore transcribed dated October 11, 1906; it being understood that when Don Salustiano Zubeldia should register his right of title to the property mortgaged to Aldecoa and Company, this firm shall then register its mortgage and shall also register the mortgage on said mortgage executed by virtue of this document; it being also understood that Messrs. Aldecoa and Company shall file with the Court of Land Registration on these islands and in the record of the petition of said Don Salustiano Zubeldia for the registration of said property the mortgage deed executed in its favor and also this document.

All the expenses caused by the execution of this mortgage deed and the filing thereof in the Court of Land Registration and its registration in the Registry of Property, shall be paid by the firm of Aldecoa & Company.

In witness whereof, we sign the present document in duplicate, in Manila this 22nd day of December, 1906.

703 (Sgd.) ALDECOA & COMPANY.
For the Hongkong & Shanghai Banking Corporation,
(Sgd.) A. STEPHEN.

Signed in the presence of:

(Sgd.) ANTONIO HIDALGO.

(Sgd.) JOSE MORENO LACALLE.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

In the City of Manila, this 22nd day of December, 1906; before me personally appeared Mr. Alexander Macleod and Mr. A. G. Stephen, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. Stephen exhibited to me his certificate of cedula No. A-1,515,678, issued by the Collector of Internal Revenue of this City, on April 7, 1906; Mr. Macleod not having done so on account of being exempt from the same being over 60 years of age.

704 In witness whereof I have hereunto set my name and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]
(Sgd.)

JOSE MA. ROSADO,
Notary Public.

My commission expires on December 31, 1906.

The above document has been filed at 9:00 a. m. on this date at folio 232 of Volume V of the Diary, Entry No. 223, Albay, Albay, P. I., May 20, 1907. Fees 0.75 cents. No. 1 of the Schedule.

(Sgd.)

CLARENCE McDONALD.

The registration of the property to which the foregoing refers has been suspended for the correctible defects of said property not being registered in the name of any person and of not expressing the limit of the amount secured by each one of the pieces of property in accordance with Sections 20 and 124 of the Mortgage Law, and in the meantime preventive notation has been made at pages 226, 228, 230, 232 of Volume III, of the Municipality of Tabaco, properties Nos. 595, 596, 597 and 598 Entry letter A rectified by letters B, A, A and A, respectively. Albay, Albay, P. I., May 28, 1907,
705 Fees P51.55.

(Sgd.)

CLARENCE McDONALD,
*Provincial Treasurer and Acting
Registrar of Property, Albay, P. I.*

The above document has again been presented at 10:00 a. m. of the 22nd day of July, 1907, folio 242 bis, of Volume V of the Diary Entry No. 248.

The term of the preventive notations to which the preceding notes refer dated May 28th last at folios 227 bis, 228 bis, 230 bis and 232 bis of Volume III of Book of Tabaco properties Nos. 595, 596, 597, and 598, entries letters C, B, B and B respectively, has been extended for 180 days in accordance with the order issued by the Court of Land Registration of the Philippine Islands, dated July 11, 1907, in the Government record No. 10.

Albay, Albay, P. I., July 29, 1907.

(Sgd.)

CLARENCE McDONALD,
*Provincial Treasurer and Acting
Registrar of Property, Albay, P. I.*

Fees P52.30 Philippine currency, Nos. 1 and 7 of the Schedule.

On the margin of the first sheet of this document there are 14 Revenue stamps of P0.50 each and 5 of P0.20 each; in the second sheet there are 10 Revenue stamps of P0.20 each and in the third sheet there is 1 Revenue stamp of P10.00, another of P3.00, 6 of P1.00 and 1 of P0.50.

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EXHIBIT "D."

Know All by These Presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of this City, as liquidator of the firm of Aldecoa & Company, of this City, now in liquidation, on account of the expiration of the term of said partnership, by virtue of an appointment made in my favor and which is registered in the Mercantile Registry of this City at folio 107 Registry 12 of Volume XVI of the Book of Companies; and Mr. A. G. Stephen, merchant, of lawful age, married and resident of this City, on behalf of the Hongkong & Shanghai Banking Corporation of which I am Manager and Director in Manila, Philippine Islands, hereby make know:-

Whereas by an instrument ratified and signed in this City before the Notary Public of the same Don Jose Ma. Rosado on February 23, 1906, the Hongkong & Shanghai Banking Corporation and Aldecoa & Company entered into an agreement by which the former binds itself to keep open in favor of the latter a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000.00) Philippine currency subject to the conditions and securities which are prescribed more in detail in the document referred to.

Whereas, at a later date the contracting parties herein also agreed that if certain shares of the Pasay Estate Company were declared to be the property of Aldecoa & Company in liquidation, said
707 shares would be given by the debtor Company to the creditor Company as a further guarantee.

Whereas, the said shares of the Pasay Estate Company Limited have become the property of said Aldecoa & Company in liquidation.

Therefore the contracting parties herein stipulate and agree as follows:

(a) Aldecoa & Company in liquidation, represented by its liquidator William Urquhart, as mortgagor, by these presents transfer and mortgages to the Hongkong & Shanghai Banking Corporation the mortgagee, the shares of the Pasay Estate Company Limited which are hereby delivered to said mortgagee for the custody and preservation thereof, said shares of the Pasay Estate Company Limited being described in detail as follows:

Certificate No. 65, ten shares Nos. 633 to 642.

"	"	66	"	"	"	643	"	652.
"	"	67	"	"	"	653	"	662.
"	"	68	"	"	"	663	"	672.
"	"	69	"	"	"	673	"	682.
"	"	70	"	"	"	683	"	692.
"	"	71	"	"	"	693	"	702.
"	"	72	"	"	"	703	"	712.
"	"	73	"	"	"	713	"	722.
"	"	74	"	"	"	723	"	732.
"	"	75	"	"	"	733	"	742.
"	"	76	"	"	"	743	"	752.
"	"	77	"	"	"	753	"	762.
"	"	78	"	"	"	763	"	772.

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Certificate No. 79, ten shares Nos. 773 to 782.

"	"	80	"	"	"	783	"	792.
"	"	81	"	"	"	793	"	802.
"	"	82	"	"	"	803	"	812.
"	"	83	"	"	"	813	"	822.
"	"	84	"	"	"	823	"	832.
"	"	85	"	"	"	833	"	842.
"	"	86	"	"	"	843	"	852.
"	"	87	"	"	"	853	"	862.

Certificate No.	88, ten shares	Nos. 863 to 872.
"	" 89	" " " 873 " 882.
"	" 90	" " " 883 " 892.
"	" 91	" " " 893 " 902.
"	" 92	" " " 903 " 912.
"	" 93	" " " 913 " 922.
"	" 94	" " " 923 " 932.
"	" 95	" " " 933 " 942.
"	" 96	" " " 943 " 952.
"	" 97 two	" " " 953 " 954.

(b) This mortgage is executed as additional security for the payment to the said Hongkong & Shanghai Banking Corporation, the mortgagee, of the amount for which Aldecoa & Company, the mortgagor, may be indebted to it by reason of the credit in current account which is mentioned in the first paragraph of this document and of whatever other amounts which said mortgagor may owe to the said mortgagee in the future.

709 (c) The mortgagee is hereby authorized to collect and receive from the Pasay Estate Company Limited all dividends, bonuses, or any other distribution of capital and profits which said Company may distribute on account of the said shares hereby mortgaged, issuing the corresponding receipts and acknowledgments of payment for the amounts so received and applying the amounts so collected by the mortgagee to the partial payment (that is to say, as far as they may reach) of the account of the mortgagor Aldecoa & Company in liquidation, until the final liquidation of said debt, and if there should be any excess, this excess shall then be paid to said Aldecoa & Company in liquidation.

(d) The conditions of this obligation are: if the mortgagor, its heirs or successors, executors or administrators, should pay to the mortgagee the whole amount owed or which may be owed by them, this obligation shall be null and void.

(e) Aldecoa & Company in liquidation reserves to itself the right to sell the shares of the Pasay Estate Company Limited above mentioned, provided that on making the sale, the purchaser shall deposit into the Bank the whole amount of purchase price; it being understood that the price so paid by the purchaser shall be applied to the reduction of the debt of Aldecoa & Company, said shares being released in that case from all incumbrance.

710 (f) The Hongkong & Shanghai Banking Corporation acknowledges to have received the shares hereby mortgaged, to keep and preserve them in its possession as above said.

(g) This instrument is and shall be considered as additional to each and every one of the documents executed by reason of the debt of Aldecoa & Company by and between said firm of Aldecoa & Company and the Hongkong & Shanghai Banking Corporation all of which documents are hereby declared to remain in full force and effect.

Done in the City of Manila, Philippine Islands, this 30th day of August, 1907.

For The Hongkong & Shanghai Banking Corporation,
(Sgd.) A. STEPHEN.

For Aldecoa & Company in Liquidation,
(Sgd.) WM. URQUHART.

Signed in the presence of:

We severally swear that the foregoing mortgage is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and the same is a just and valid obligation and one not entered into for the purpose
711 of fraud.

For the Hongkong & Shanghai Banking Corporation,
(Sgd.) A. STEPHEN.

For Aldecoa & Co. in Liquidation,
(Sgd.) WM. URQUHART.

UNITED STATES OF AMERICA,
City of Manila, Island of Luzon,
Philippine Islands, ss:

In the City of Manila on the 30th day of August 1907, A. D., personally appeared Messrs. William Urquhart and Alexander Stephen, the parties who signed the foregoing affidavit as to the facts therein consigned and made oath to the truth thereof before me. Said gentlemen exhibited their respective certificates of cedula No. A-1,488,603 and A-1,479,705, issued in Manila the 8th day of February and 18th of January 1907.

In witness whereof, I have hereunto set my name and affixed my official seal the *date*, month and year above mentioned.

[NOTARIAL SEAL.] (Sgd.) D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

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EXHIBIT "E."

Know all by these presents: That we, Mr. William Urquhart, merchant, of lawful age, single and resident of the City of Manila, as liquidator of the firm of Aldecoa and Company of this City, duly authorized and appointed for such office by the members of said firm as per resolutions taken on January 2nd and 24th, 1907, duly registered at sheet No. one hundred and fifty-six (156) quadruplicate, folio 107 and over of Volume sixteenth of the Book of Partnerships of the Mercantile Registry of Manila; and Mr. Alexander Gordon Stephen, of lawful age, married and resident of this City, as Manager and legal representative in this City of the corporation known as the Hongkong and Shanghai Banking Corporation by virtue of the letters of Attorney conferred to me in a public in-

strument executed on February fourteenth (14) of the year 1894, before the Notary Public of the British Colony of Hongkong Mr. G. C. C. Master, which has been duly registered in the Mercantile Registry of the City of Manila at sheet No. ten (10) triplicate, folio 56 of Volume VII of the Book of Partnerships; hereby declare and make it known:

Whereas Don Andres Garchitorena y Medina by virtue of a public instrument executed on the 11th day of December 1903, before the Notary Public of Manila Don Jose Ma. Rosado y Calvo, 713 guaranteed to the firm of Aldecoa and Company of this City the balance owed by him to this Company, which document literally copied is as follows:

Know all by these presents: That we, Don Andres Garchitorena y Medina, merchant, of lawful age, married to Doña Carmen Ortiz, domiciled in the Province of Ambos Camarines, and accidentally residing in this City, the party of the first part; and Don Alejandro S. Macleod, merchant, of lawful age, married and resident of this Capital, as managing partner with the power to sign the firm's name of the general mercantile partnership of Aldecoa and Company, of this City, by virtue of a designation made in his favor by the other partners in accordance with the powers conferred by clauses 6th and 7th of the articles of partnership executed in this City before the Notary Public of the same, Don Enrique Barrera y Caldes, on December 31st, 1896, and modified by another instrument dated February 20th, 1898, executed and ratified before the same Notary Señor Barrera, the first copies thereof being registered at sheet No. 156 folios 92 and 101 of the Book of Partnerships of the Mercantile Registry of this Capital, the party of the second part, by this document state and agree as follows:

714 "1. That by an instrument No. 682 executed in this City before the Notary Public of the same Don Jose Ma. Rosado on the 29th of September, 1900, Don Andres Garchitorena y Medina declared and confessed to be in debt to the firm of Aldecoa and Company in the sum of eleven thousand three hundred and nineteen pesos and twenty-six centavos (P11,319.25) which he had received from the same as a loan, in Mexican money counted to his entire satisfaction; binding himself to pay en comandita with Messrs. Tremoya Hermanos as well as with those which may correspond him as sole and exclusive owner; binding himself from this moment to do whatever might be necessary to carry into effect the payment referred to, which was accepted by the firm of Aldecoa and Company through its representative Don Sixto Jesus Alvarez Perez, who in the same document and in the capacity in which he appears, granted and opened a credit in current account without a fixed term and independent from the debt above referred to, in favor of the same Don Andres Garchitorena and only up to the sum of twenty thousand pesos (P20,000) Mexican money and under the other conditions specified in said instrument, and guaranteeing the credit granted by virtue of the same as well as what-

ever obligations which Don Andres Garchitorena contracted by virtue of the special voluntary mortgage which he executed in favor of the firm of Aldecoa and Company on the right of property which he has on the following property, to wit:

715 A. Rural property, consisting of a land destined to pasture near the Visitas of Cibgon, Taytay and Pamboan in the province of Ambos Camarines, it is bounded on the North by lands of Don Eulogio Fernandez; on the East by the sea; and marshes of the State; on the South by pasture lands of Don Mariano Villamor and the river called Taytay which flows into the Vista of Pamboan; and on the West by Port Sisiran; measuring nine hundred and fifty-four hectares.

B. Another rural property, consisting of a land situated in the place designated as "Salvacion de la Visita de Higñaroy" of the town of Tigaon in the province of Ambos Camarines, the area of which measures 607 hectares 26 ares of which 486 hectares and 79 ares are in part cogon bushes and in part hemp plantations, and 124 hectares and 47 ares are cogon bushes, its boundaries being as follows: on the North, woods of the State, hemp plantations of Don Paciano Badirian, Don Luis Jallores, the creek of Tinangay and creek of Talanquiso; on the South, river Osini, the confluence of river- Daso and Osini and the said river Daso; on the East 716 river Cigaren and land of Don Juan Filipino; and on the West, land of Pedro Barrubia and said river Osini. This property is registered at folios 16 and 8, books 1st. and 1st. of the towns of Caramoan and Tigaon respectively, appearing at folios 30 bis. and 25 bis, 247 to 248, Second inscriptions in the Registry of Property of Camarines Sur.

"2. That by a public instrument No. 99 executed in this City before the same Notary Mr. Rosado the firm of Aldecoa and Company, on February 8, 1901, granted and opened a new credit in current account up to the sum of twenty thousand pesos (P20,000.00) as an extension of that which is mentioned in the preceding paragraph and independent from the debt of eleven thousand three hundred and nineteen pesos and twenty-six centavos (P11,319.26) which in the same mention is made of, in favor of the said Don Andres Garchitorena and under the basis and conditions stipulated and set forth in said instrument, guaranteeing said credit with the special voluntary mortgage on the following property:

C. Rural property, consisting of a parcel of land on which there are built a house of mixed materials of timber and stone with nipa roofs destined to living quarters and a camarine also of mixed 717 materials of timber, stone, mortar, iron and nipa destined to store house of deposit of products within which there is a hemp press: it is situated in the town of Sognay of the province of Ambos Camarines, and is bounded on the North and East, on which side it measures approximately 73 meters, by the road of the visita of Nato which runs along the sea; on the South, at which side it measures 40 meters approximately, by the road which leads to the town of Sagnar and on the West and North, on which sides it

measures 70 meters and 25 meters approximately, by a creek without name and the lot of Manuel Valencia; the house measures 12 meters in front by 11 meters deep and the camarine 30 meters front and 12 meters deep.

"3. That I, Andres Garchitorena y Medina as a result of what is stipulated by me with Messrs. Aldecoa and Company according to the documents mentioned in the preceding paragraphs, on this date I owe to said gentlemen the sum of sixty-one thousand nine hundred and fifteen pesos and seven centavos (P61,915.07) and in order that it may appear in an indisputable manner, I execute this document by virtue of which most solemnly state: that I am indebted to the
718 firm of Aldecoa and Company, of this City, in the total sum of sixty-one thousand nine hundred and fifteen pesos and seven centavos (P61,915.07) which I have received from the same in cash, counted to my entire satisfaction; for which reason I execute in their favor the acknowledgment of having received said sum, in the most firm and valid manner which may be convenient to their rights and security.

"4. That said amount of sixty-one thousand nine hundred and fifteen pesos and seven cents (P61,915.07) Mexican currency, shall earn a reciprocal interest of six per cent (6%) per annum, beginning from this date, to be settled at the end of every quarter.

"5. I, Don Andres Garchitorena y Medina, bind myself to pay to the firm of Aldecoa and Company the sum of sixty-one thousand nine hundred and fifteen pesos and seven cents (P61,915.07) which I owe the same at the following rate and in the following manner:

- (a) Ten thousand pesos on March 30, 1904;
- (b) And the balance of fifty-one thousand nine hundred and fifteen pesos and seven cents by partial instalments of five thousand pesos each to be paid at the end of every quarter from the date of the
719 payment of the ten thousand pesos referred to in the above paragraph with the exception of the last instalment which shall be for six thousand nine hundred and fifteen pesos and seven cents.

"6. Failure to pay one instalment shall give a right to the creditor to consider the rest of the instalments due and payable and, therefore, it shall, from that date, have a right to demand from me, Andres Garchitorena, the total sum of what I may owe at the time when I shall fail to comply with my obligation.

"7. Whatever obligations I, Andres Garchitorena, have contracted by reason of the documents or instruments above referred to, shall remain in force in every part thereof, while this debt may exist.

"8. That to secure the amount which I now owe and whatever obligations I have contracted, I, Andres Garchitorena, confirm and declare to be in force the special voluntary mortgages which I executed on the different pieces of property hereinbefore described, the property marked with letter "A" being security up
720 to the sum of eighteen thousand pesos (P18,000.00) Mexican currency; that described under letter "B" being security for the sum of twenty-six thousand nine hundred and fifteen pesos and seven cents (P26,915.07) Mexican currency; and that described under

letter "C" for the sum of seventeen thousand pesos (P17,000.00) Mexican currency, each one of the said pieces of property being liable, besides, for the sum of three hundred pesos (P300.) Mexican currency for the costs and judicial expenses in case of foreclosure.

"9. That by common agreement with Mr. Alexander S. Macleod, in the capacity in which he appears, I, Andres Garchitorena, fix the value of the mortgaged property as follows: that marked with letter "A" in the sum of twenty thousand pesos (P20,000.00) Mexican currency; that described under letter "B" in the sum of thirty thousand pesos (P30,000.00) Mexican currency; and that described under letter "C" in the sum of twenty thousand pesos (P20,000.00) Mexican currency, which value shall be the appraised price for the only auction which in case Don Andres Garchitorena should fail to comply with all or any of his obligations must take place in accordance with the provisions of the existing mortgage law and the procedure established in the same, the general regulations for the execution thereof and the other legal provisions which might be promulgated in the future on the premises, waiving therefore any other valuation of said property and the action which there might be towards this end.

721 "10. I, Don Andres Garchitorena, bind myself to register my right of property and of possession which I have on the property above described, as well as the mortgages which I have executed thereon in the new Registry of the property within the term of six months from this date; it being understood that if I should fail to proceed to said registration, the creditor company shall have the right, at the expiration of the said six months, to demand from me the full amount of my debt as well as the interest thereon.

"11. That I, Don Andres Garchitorena, shall not sell any of the property mortgaged without the knowledge and consent of the creditor company, and even in that case, I shall have to pay to said company as soon as the sale takes place the amount which I may receive as purchase price, in order to pay in part with said amount the sum which I might be owing at the time of the sale.

"12. I, Don Alejandro S. Macleod, in the capacity in which I appear herein, accept this document as to each and every one of its parts.

722 "13. That we submit ourselves to the jurisdiction of the judges and the Courts of this City for whatever judicial questions might arise by reason of the non-compliance of our obligations, waiving therefore expressly the forum of our respective domiciles.

"In witness whereof, we sign the present document in Manila, in triplicate, this 11th day of December, 1903.

(Sgd.)

ANDRES GARCHITORENA.

(Sgd.)

ALDECOA & COMPANY.

Signed in the presence of:

(Sgd.) POT. VILL. BERNABE.

(Sgd.) V. A. MAÑALAC.

UNITED STATES OF AMERICA,

City of Manila,

Island of Luzon, Philippine Islands:

In the City of Manila, this 11th day of December, 1903, before me appeared Don Andres Garchitorena y Medina and Mr. Alexander Macleod, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. Andres Garchitorena exhibited his certificate of cedula No. 126,077 issued in Nueva Caceres on April 3rd,

1903, Mr. Alexander S. Macleod not exhibiting any for reason
723 of being exempt from said certificate being as he is over
fifty-five years old.

In witness whereof, I have set my name herein and affixed my official seal the day, month and year above mentioned.

[NOTARIAL SEAL.]

(Sgd.)

LDO. JOSE MA. ROSADO Y CALVO,

Notary Public.

My commission expires on January 1, 1905.

Whereas, said Don Andres Garchitorena y Medina still owes the firm of Aldecoa and Company the sum of twenty thousand two hundred and eighty-two pesos and nineteen centavos (P20,282.19) Philippine currency, being the balance of the debt acknowledged in the foregoing instrument;

Whereas, the mortgages executed in favor of the creditor in the above said instrument of December 11, 1903, are still in force with the exception of that on the property described under letter "C" which was at a later date acquired by the same firm of Aldecoa and Company;

Whereas, both debtor and the creditor, on February 23, 1907, agreed to modify the liability fixed for the premises described under letters "A" and "B," distributing between them the said remainder or balance of twenty thousand two hundred and eighty-two pesos and nineteen centavos (P20,282.19) Philippine currency, executing

the said agreement by a letter which on said date the debtor
724 wrote to the creditor Aldecoa and Company which letter
reads literally as follows:

MANILA, February 23, 1907.

Messrs. Aldecoa and Company, in Liquidation.

GENTLEMEN: This is to ask you that the balance of P20,282.19 which still I am indebted to you, be distributed between the property which I have mortgaged to you for the security of the payment of what I owe you, according to the instrument of December 11, 1903, in the following proportion:

The property which in the deed of December 11, 1903, is described under letter "A" shall be liable for the sum of P2,000 principal and interest thereof, and that described under the letter

"B" shall be liable for the sum of P18,282.19 principal and corresponding interest.

To this effect I earnestly beg you to please apply the payments I have heretofore made to reduce the mortgage in the proportion hereinbefore stated, so that the balance of P20,282.19 which I actually owe you, be distributed between the mortgaged property in the proportion above indicated.

I remain yours very sincerely,

(Sgd.)

ANDRES GARCHITORENA.

Whereas, by public instrument executed in this City before the Notary Public of the same Don Jose Ma. Rosado on February 23, 1906, the Hongkong and Shanghai Banking Corporation granted to the firm of Aldecoa and Company of this City a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000.00) Philippine currency under the terms and conditions and securities contained in said instrument and in another additional instrument executed on March 23, 1906, before the same Notary Mr. Rosado;

Whereas, the firm of Aldecoa and Company by reason of the credit which was granted to it, by said instrument of February 23, 1906, owes to the Hongkong and Shanghai Banking Corporation at the present time the sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency;

Whereas, the creditor Company desires that new securities be given in addition to those given by the mentioned instruments of February 23, 1906, and the contracting parties herein have agreed to enlarge said securities with the mortgage of the real right of mortgage executed in favor of the firm of Aldecoa and Company on the property described under letters "A" and "B";

Therefore, the parties hereto, stipulate, agree and covenant as follows:

That as additional security for the payment of said sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (475,594.47) Philippine currency which the firm of Aldecoa and Company in Liquidation owes at present to the Hongkong and Shanghai Banking Corporation, I, William Urquhart, in the capacity above stated, by these presents do constitute voluntary special mortgage on the mortgage right which the Company which I represent has on the property described under letters "A" and "B" in the foregoing instrument of December 11, 1903; it being understood that the present mortgage shall depend from the resolution of the prior mortgage; and it being also understood that the mortgage of the real right of mortgage on the property described under letter "A" shall be liable for the sum of two thousand pesos (P2,000) Philippine currency principal and interest thereof, and that of the property described under letter "B" shall be liable for the sum of eighteen

thousand two hundred and eighty two pesos and nineteen centavos (P18,282.19) Philippine currency principal and interest.

All the expenses caused by the execution of this document as well as the expenses for the filing of the same in the Registry of the Property and the registration thereof in the Registry of Deeds, shall be born- exclusively by the firm of Aldecoa & Company.

I, Alexander Gordon Stephen, as Manager and legal representative of the Hongkong and Shanghai Banking Corporation of this City, accept this document in the precise terms in which it is executed.

In witness whereof, we sign these presents in Manila, this 31st day of March, 1907.

(Sgd.) By **ALDECOA & CO., In Liquidation,**
WM. URQUHART.
 For the Hongkong and Shanghai Banking Corporation,
 (Sgd.) **A. G. STEPHEN, Manager.**

Witnesses:

(Sgd.) **Jose MORENO LACALLE.**
 (Sgd.) **JOHN W. HAUSSERMANN.**

728 **UNITED STATES OF AMERICA,**
Philippine Islands, City of Manila, ss:

In the City of Manila, this 13th day of June, 1907, personally appeared before me Mr. William Urquhart on behalf of the firm of Aldecoa & Company in Liquidation, and Mr. Alexander Gordon Stephen as Manager and agent of the Hongkong & Shanghai Banking Corporation of this City, whom I know to be the persons who executed the foregoing instrument and ratified the same as their own free and voluntary act and deed. Mr. William Urquhart exhibited his cedula No. A-1,488,603 issued in Manila on February 8, 1907, and Mr. Stephen exhibited his No. A-1,479,705 issued in Manila on January 18, 1907.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Public Notary.

My commission expires on December 31, 1908.

(P0.20 Internal Revenue stamp.)

The above document has been registered in regard to property marked with letter "B" at folios 249 and 250 bis of Volume VIII Book I of Tigaon property No. 608, IV inscription extended; and in regard to property marked with letter "A" at folio 26 bis of Volume XVI of Book I of Caramoan, property No. 11, concised inscription IV, Nueva Caceres, September 3, 1907.

(Sgd.)

JULIAN OCAMPO,
Registrar of Deeds.

A stamp which reads: Registry of Deeds, province of Ambos Camarines, P. I.

Know all by these presents: That we, William Urquhart, merchant, of lawful age, single and resident of the City of Manila, as Liquidator of the firm of Aldecoa and Company of this City, duly authorized and appointed for such office by the members of said firm as per resolutions taken on January 2nd and 24th, 1907, duly registered at sheet No. one hundred and fifty-six (156) quadruplicate folio 107 and over, of Volume sixteenth of the Book of Partnerships of the Mercantile Registry of Manila; and Mr. Alexander Gordon Stephen, of lawful age, married and resident of this City, as Manager and legal representative in this City of the corporation known as the Hongkong and Shanghai Banking Corporation by virtue of the letters of Attorney conferred to me in a public instrument executed on February fourteenth (14) of the year 1894, before the Notary Public of the British Colony of Hongkong Mr. G. C. C. Master, which has been duly registered in the Mercantile Registry of the City of Manila at sheet No. ten (10) triplicate, folio 56 of Volume VII of the Book of Partnerships; hereby declared and make it know:-

Whereas, by a document executed on June 8, 1904, before Don Jose Ma. Rosado y Calvo, Notary Public of the City of Manila, Don Liborio Tremoya, as managing partner with power to sign in the name of the mercantile firm of "Tremoya Hermanos," domiciled in Lagonoy, Province of Camarines, in order to secure the payment of the sum of forty-three thousand one hundred and seventeen pesos and forty centavos (P43,117.40) Philippine currency which said firm of Tremoya Hermanos came to be indebted to the firm of Aldecoa and Company of Manila, as per balance made and taken on May 31, 1904, executed in favor of the firm of Aldecoa and Company a voluntary special mortgage on the following property owned by the firm Tremoya Hermanos:

A. Urban property, composed of a living house of stone on the lower floor and timber on the upper floor, and camarines with hemp press and one store house, all of it built on one parcel of land enclosed within a masonry wall, situated in the town of San Jose, Province of Ambos Camarines, Philippine Islands. The land on which the above described property is built measures 19 ares, its front measuring 50 meters. It is bounded on the North by Milaor Street, on the South by church lands, on the East by the lot of Don Tomas R. Perez and on the West by San Vicente Street. It was purchased from Don Andres Garchitorena. This property was appraised in twenty thousand pesos (P20,000.00) Philippine currency and its liability was fixed in the sum of sixteen thousand nine hundred and seventeen pesos (P16,917.00) Philippine currency, for principal and interest, plus seven hundred pesos (P700.00) Philippine currency for the payment of costs and expenses in case of judicial foreclosure.

Preventive notation made at Vol. 74, pages 237 to 239, property No. 767 extensive notation letter B.

B. Urban property, situated in the town of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of a camarine which measures 7 meters 65 centimeters in depth, being built of masonry and located 60 centimeters from the eastern boundary of the lot, that is to say, on the side adjoining the lot of Don Quintin Barrameda and 3 meters from the south boundary of the lot, that is to say, calle Milaor; the area of the lot, on which this property is built, measures 8 ares, 68 centares, bounded on the North by the lot of Don Quintin Barrameda and that of the estate of Don Manuel Achondo, on the South by calle Milaor and on the East by the lot of Don Quintin Barrameda and on the West by calle San Vicente. It was purchased from Don Andres Garchitorena.

This property was appraised in eight hundred pesos (800.00) Philippine Currency and its liability was fixed in the sum of five hundred pesos (500) Philippine currency principal and interest plus one hundred pesos (P100) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Preventive notation made at Vol. 74 pages 242 and 243 property No. 768 short notation letter B.

C. Urban property, situated in the Municipality of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of one kiosko measuring 10 meters in front by 6 meters in depth, being constructed of timber and galvanized iron. The area of the lot of this property measures 38 ares 90 centares, bounded on the North by the lot of the estate of Don Manuel Achondo, on the South by calle Milaor, on the East by calle San Vicente and on the West by the lot of Don Andres Garchitorena. It was purchased from Don Andres Garchitorena. This property was appraised in eight hundred pesos (P800.00) Philippine currency and the liability thereof was fixed in the sum of five hundred pesos (P500) principal and interest plus one hundred pesos (P100) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 74 pages 246 and 247 property No. 769 concised notation letter B.

D. Urban property, situated in the Visita of Sabang of the Municipality of San Jose, Province of Ambos Camarines, Philippine Islands, consisting of a camarine of masonry and also a house of masonry in the lower floor and timber in the upper floor, covering a space in the lot measuring 99 square meters and 65 square centimeters. The lot measures 1 hectare 25 ares and 80 centares; bounded on the North by the road that leads to San Jose; on the South by the Pacific Ocean; on the East by the lot of Don Andres Garchitorena and on the West by the lot of the estate of Don Manuel Achondo. Part of the same was built and the rest was purchased from Don Andres Garchitorena. This house and lot

was appraised in fifteen thousand pesos (P15,000.00) Philippine currency and in the said deed of June 8, 1904, its liability was fixed in the sum of ten thousand pesos and forty centavos (P10,000.40) Philippine currency plus seven hundred pesos (P700.00) Philippine currency for costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 74 pages 250 and 251 property No. 770, concised notation letter B.

E. A *late* in Tigaon in the town of the same name in the side of Talooon, Province of Ambos Camarines, appraised in twenty thousand pesos (P20,000.00) Philippine currency, its liability being fixed in the above mentioned instrument, in sixteen thousand pesos (P16,000.00) Philippine currency plus five hundred pesos (P500.00) for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 26 and 27, property No. 614, concised notation letter B.

F. All the *lates* which are located in the Visitas of Payata, La Luz and Pinalabanan, appraised in eight thousand pesos (P8,000.00) Philippine currency, and in said instrument their liability was fixed in five thousand pesos (P5,000.00) plus five hundred pesos (P500.00) Philippine currency in case of litigation.

Notation made at Vol. 75 pages 226 and 227, property No. 683, concised notation letter B.

735 G. House and lot in Tigaon appraised in eight hundred pesos (P800.00) Philippine currency, their liability being fixed in the above named instrument in five hundred pesos (P500.00) plus one hundred pesos (P100) Philippine currency for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 29 to 31, property No. 615 concised notation letter B.

H. House and warehouse of galvanized iron situated in the town of Sanay, Province of Ambos Camarines, appraised in one thousand pesos (P1,000) Philippine currency and in said instrument of June 8, 1904, their liability was fixed in eight hundred pesos (P800) plus one hundred pesos (P100) for costs and expenses in case of litigation.

Notation made at Vol. 38 Book II of Langay, folios 224 bis and 225, property No. 350, concised notation letter B.

I. Three hemp plantations in Buyo in the town of Goa, Province of Ambos Camarines, appraised in seven thousand pesos (P7,000) Philippine currency, their liability being fixed by said instrument in the sum of five hundred (500) pesos for costs and expenses in case of litigation.

Notation made at Vol. 75 pages 230 and 231, property No. 684, concised notation letter B.

J. Rice paddies in San Jose de Lagonoy, Province of Ambos Camarines, appraised in nine hundred pesos (P900.) Philippine currency, their liability being fixed in said instrument in the sum of four hundred pesos (P400) Philippine currency plus one hundred pesos (P100) for the payment of costs and expenses in the event that the creditor should have to resort to the judicial foreclosure thereof.

Notation made at Vol. 75 pages 244 and 245, property No. 771, concised notation letter B.

Whereas, in the same instrument of June 8, 1904, above referred to, Don Liborio Tremoya, in his own name and rights, in guarantee of his personal debt which, according to the balance made on May 31, 1904, came up to the sum of seventy-three thousand four hundred and sixty-three pesos and fifty-four centavos (P73,463.54) Philippine currency, the acknowledgment of which was set down in said instrument, executed a voluntary special mortgage in favor of the firm of Aldecoa and Company on the following property of his own:

K. Urban property, that is to say, a lot situated in calle Daquitan in the barrio of Tabuco, Municipality of Nueva Caceres, Province of Ambos Camarines, Philippine Islands, measuring 2115 square meters, bounded on the right of its entrance by Ana Jacobo heir of Feliciano Jacobo, Isidoro Francisco; on the left by a public street without name which leads to the camarine for the loading and unloading of the steamers, on its front by calle Daquitan and on the back by Bonifacia Regalado. Within which lot there is a building constructed with strong materials with a hemp press. The lot was purchased from Don Jose Gallietabeitia, according to an instrument No. 75 executed on September 24, 1901, before the Notary Public of Nueva Caceres, Province of Ambos Camarines, Don Tomas Flordelisa; the building was built by the owner. Said property is registered in the old Registry of the Property of said Province at Volume II Book I of Nueva Caceres, folio 40 bis, property No. 12, inscription IV; this property was appraised in forty-five thousand pesos (P45,000) Philippine currency and its liability was fixed in forty-four thousand pesos (P44,000) Philippine currency principal and interest plus five hundred pesos (P500) for costs and expenses in case of litigation.

Registered at Vol. 63 of the Archive which is Book 5 of Nueva Caceres, folios 209 and 209 bis and 210, property No. 12, extensive inscription No. 7.

Whereas, Don Liborio Tremoya of his own right and as Manager of the mercantile firm Tremoya Hermanos bound himself and promised to pay to Aldecoa and Company on account of the two debts above mentioned, the sum of twelve thousand pesos (P12,000) per year until both debts were fully paid, the creditor reserving the right to apply these payments to these two debts in the proportion which it might desire or to apply the full sum paid

to the partial payment of one of the two debts if the creditor should deem it convenient to do so. It was also agreed that both debts should earn no interest, on condition that the debtors should comply most strictly with said partial payments and on the contrary said debt should earn an interest at the rate of eight per cent (8%) per annum from the last instalment which the debtor should have failed to pay.

Whereas, by public instrument executed in this City before the Notary public of the same Don Jose Ma. Rosado y Calvo on February 23, 1906, the Hongkong and Shanghai Banking Corporation granted the firm of Aldecoa and Company of this City, a credit in current account up to the sum of four hundred and seventy-five thousand pesos (P475,000) under the terms and conditions and guaranties contained in said instrument and in another additional one executed on March 23, 1906, before the same Notary Mr. Rosado.

Whereas the firm of Aldecoa & Co. by reason of the credit opened in its favor by virtue of the instrument dated February 23, 1906, is at present indebted to the Hongkong & Shanghai Banking Corporation the sum of four hundred seventy-five thousand five hundred ninety-four 47/100 (P475,594.47) pesos, Philippine Currency.

739 Whereas, the creditor Company desires that new securities be given in addition to those given by the mentioned instruments of February 23 and March 23, 1906, and the contracting parties herein have agreed to enlarge said securities with the mortgage of the real right of mortgage executed in favor of the firm of Aldecoa and Company on the property described under letters "A," "B," "C," "D," "E," "G," "H," "I," "J," "K,"

Therefore, the parties hereto stipulate, agree and covenant as follows:

That as additional security for the payment of said sum of four hundred and seventy-five thousand five hundred and ninety-four pesos and forty-seven centavos (P475,594.47) Philippine currency which the firm of Aldecoa and Company in Liquidation owes at present to the Hongkong and Shanghai Banking Corporation, I, William Urquhart, in the capacity above stated, by these presents do constitute voluntary special mortgage on the mortgage right which the Company which I represent has on the property described under letters "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," in the said instrument of June 8, 1904, it being understood that the present mortgage shall depend from the resolution of the prior mortgages.

740 The mortgage of the real right of mortgage on each one of the above described property shall be liable for the following amount:

The right of mortgage corresponding to the property described under letter "A," shall be liable in the sum of sixteen thousand nine hundred and seventeen pesos Philippine currencyP16,917.00

That corresponding to the property described under letter "B" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "C" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "D" for the sum of ten thousand pesos and forty centavos Philippine currency	P10,000.40
That corresponding to the property described under letter "E" for the sum of sixteen thousand pesos Philippine currency	P16,000.00
741 That corresponding to the property described under letter "F" for the sum of five thousand pesos Philippine currency.....	P5,000.00
That corresponding to the property described under letter "G" for the sum of five hundred pesos Philippine currency	P500.00
That corresponding to the property described under letter "H" for the sum of eight hundred pesos Philippine currency	P800.00
That corresponding to the property described under letter "I" for the sum of five thousand pesos Philippine currency	P5,000.00
That corresponding to the property described under letter "J" for the sum of four hundred pesos Philippine currency	P400.00
And that corresponding to the property described under letter "K" for the sum of forty-four thousand five hundred pesos Philippine currency	P44,500.00

Mr., William Urquhart in the capacity above stated states also that none of the mortgage credits referred to in this instrument have been alienated, sold, ceded, or encumbered in any manner.

742 All the expenses occasioned by the execution of this document as well as for the filing of the same in the Court of Land Registration and registration of the same in the Registry of Deeds and those for the cancelation when the same be made shall be exclusively on the account of the firm of Aldecoa and Company in liquidation.

I, Alexander Gordon Stephen, as Manager and Agent in this City of the Hongkong and Shanghai Banking Corporation accept this instrument in the precise terms in which it has been executed.

In witness whereof, we sign these presents in Manila, this 31st day of March 1907.

ALDECOA AND COMPANY,
In Liquidation,

(Sgd.) By WILLIAM URQUHART.
For the Hongkong and Shanghai Banking Corporation,
(Sgd.) A. G. STEPHEN, *Manager.*

Witnesses:

(Sgd.) JOSE MORENO LACALLE.
(Sgd.) JOHN W. HAUSSELMANN.

743 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

In the City of Manila this 13th day of June, 1907, personally appeared before me Mr. William Urquhart on behalf of the firm of Aldecoa and Company in liquidation, and Mr. Alexander Gordon Stephen as Manager and agent of the Hongkong and Shanghai Banking Corporation of this City, whom I know to be the persons who executed the foregoing document and ratified *that* the same as their own free and voluntary act and deed. Mr. William Urquhart exhibited his cedula No. A-1,488,603 issued in Manila on February 8, 1906, and Mr. Stephen exhibited his No. A-1,479,705 issued in Manila on January 18, 1907.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,
Notary Public.

My commission expires on December 31, 1908.

(A P0.20 Internal Revenue Stamp.)

There is another seal which reads as follows: Registry of Deeds—Province of Ambos Camarines—Philippine Islands.

744 The above document has been registered in regard to property marked with letter "K" at folio and Volume expressed on the margin of said property.

The registration of this document has been suspended in regard to the pieces of property marked with letters "A," "B," "C," "D," "E," "F," "G," "H," "I," and "J," by reason of the defect of there being no registration but only a preventive notation of the right of mortgage constituted on said property in favor of the firm of Aldecoa and Company on which right of mortgage the new encumbrance of a sub-mortgage has been constituted in favor of the Hongkong and Shanghai Banking Corporation. And this defect being susceptible of correction, at the instance of the interest of parties, I have made a preventive notation of the preceding document at the folios and Volume expressed on the margin of the description of each one of these properties, returning the present document

to the interested parties so that within the term of sixty days beginning from this date, they may correct the defect. Nueva Caceres, Ambos Camarines, September 25, 1907.

(Sgd.)

JULIAN OCAMPO,

Registrar of Deeds.

Fees P118.25, Nos. 2 and 7 Sch.

745 An extension from sixty to 180 day- had been noted by order of the Court of Land Registration dated October 22, 1907, in regard to the preventive notation of the property described in the preceding document at Books, Volumes and folios as follows: Parcel "A" at folios 1, 2 and 3 of Vol. 76, property No. 767, notation letter D; "B" at folios 244, Vol. 74 and 11 of Vol. 76, property No. 768, notation letter D; "C" at folios 242 and 248 Vol. 74, property No. 769, notation letter D; "D" at folios 252, Vol. 74 and 15 of Vol. 76, property No. 770, notation letter D; "E" at folios 28 Vol. 75 and 19 Vol. 76, property No. 614, notation letter D; "F" at folios 228 Vol. 75 and 23 Vol. 76, property No. 683, notation letter D; "G" at folios 32 and 33 Vol. 75, property No. 615, notation letter D; "H" at folios 225 to 226 Vol. 38, property No. 315, notation letter D; "I" at folios 232 to 233 Vol. 75, property No. 684, notation letter D; and "J" at folios 246 to 247 Vol. 75, property No. 771, notation letter D. Nueva Caceres, January 6, 1908.

(Sgd.)

TOMAS FLORDELISA,

Acting Provincial Fiscal, Registrar

of Deeds, Ambos Camarines.

There is a seal which reads: Registry of Deeds—Province of Ambos Camarines—Philippine Islands.

Fees P80.55 No. 2 and 7 Sch.

746

EXHIBIT "G."

Agreement.

Whereas, on the 23rd day of February, 1906, Aldecoa & Co., a co-partnership duly registered in the Mercantile Registry of the City of Manila, and the Hongkong & Shanghai Banking Corporation, a corporation duly organized under the laws of Great Britain, and registered in the City of Manila, made and executed a certain escritura, a copy of which is hereto attached; and

Whereas, by the terms of said escritura the Hongkong & Shanghai Banking Corporation opened a credit in favor of said Aldecoa & Co. to the extent of P475,000.00 under the terms and conditions therein mentioned; and

Whereas, by the terms of said agreement said Aldecoa & Co. were authorized to draw checks on said credit solely for the purpose of obtaining funds to be used for the purchase of hemp, rice and other products of the Philippine Islands; and

Whereas, Aldecoa & Co., from time to time since the 23rd day of February, 1906, utilized said credit by obtaining funds, part of

which funds were delivered and advanced to the various dealers in produce in the provinces of the Philippine Islands to be used by said dealers for the purpose of buying hemp and other products of the

Philippine Islands to be consigned to the said Aldecoa & Co.
 747 for sale on account of said dealers; and that said moneys were received by said dealers for the purpose of purchasing in the provinces hemp and other products of the Philippine Islands, to be shipped and consigned to said Aldecoa & Co. for and on account of said dealers; and

Whereas, by paragraph 5 of said escritura hereto attached, marked "A," the said Aldecoa & Co. obligated and bound itself to deliver to the Hongkong & Shanghai Banking Corporation the proceeds of the sales of said hemp and other products of the Philippine Islands so shipped and consigned to said Aldecoa & Co. by said dealers and consignors of said Aldecoa & Co., which proceeds were to be applied in partial payment of the indebtedness of said Aldecoa & Co. to the said Bank; and

Whereas, on the 30th day of November, 1906, the debit balance of Aldecoa & Co. at said Bank, created under and by virtue of said escritura dated February 23, 1906, amounted to P515,519.54; and

Whereas, on said 30th day of November, 1906, as additional security for the payment of said debit balance of said Aldecoa & Co. the said Aldecoa & Co. hypothecated to said Hongkong & Shanghai Banking Corporation the debts owing to Aldecoa & Co. by its provincial debtors, which said debt amounted in the aggregate to P522,600 and were to be liquidated by the respective provincial debtors by shipping and consigning to said Aldecoa & Co. hemp of the value of the respective amounts due from said debtors; and

748 Whereas, the overdraft of Aldecoa & Co., created under and by the terms of said escritura, marked "A," on the 31st day of December, 1906, amounted to P516,517.98; and

Whereas, on the 31st day of December, 1906, the balance due and owing said Aldecoa & Co. by its provincial debtors so hypothecated to said Bank amounted in the aggregate to the sum of P538,976.80 the names of which provincial debtors and the respective amounts owing by each are as follows:

Martin de Achaval.....	P22,855.26
Salustiano Zubeldia	121,709.53
Viuda e Hijos de F. Escaño.....	68,511.54
Francisco Rodriguez	9,700.51
Carranceja y Portilla.....	6,835.24
Manuel Veloso	129,748.65
Acordagoicoechea Hermanos	91,188.39
Miguel Pelaez	88,427.68
	<hr/>
	P538,976.80

Whereas, the above named debtors were duly notified of said hypothecation; and

Whereas, said Aldecoa & Co. was unable to reduce said overdraft on said 31st day of December, 1906, to the sum of P425,000.00 as provided in said escritura marked "A;" and

Whereas, said Aldecoa & Co. on the 31st day of December, 1906, was declared in liquidation, and W. Urquhart, was duly elected as the liquidator of said Aldecoa & Co.; and

749 Whereas, since the 31st day of December, 1906, the above named debtors have ceased to ship and consign hemp to said Aldecoa & Co. or the liquidator thereof; and

Whereas, by said cessation of shipments and consignments of hemp and products by said debtors to said Aldecoa & Co., or its liquidator, they, the said provincial debtors, and each of them, became obligated to pay in cash to said Aldecoa & Co., in liquidation, the sums due and owing said Aldecoa & Co.; and

Whereas, it is the duty of said liquidator to collect from said debtors the various sums due and owing said Aldecoa & Co.; and

Whereas, under and by virtue of paragraph 8 of said escritura hereto attached, marked "A," the said sums collected from the said provincial debtors are to be paid to the Hongkong & Shanghai Banking Corporation to be applied by said Bank to the credit of said Aldecoa & Co. in partial payment of the overdraft of said Aldecoa & Co. according to the terms of said escritura;

Now, Therefore, for the purpose of carrying into effect the terms of said escritura, and to make effective the hypothecation executed by said Aldecoa & Co. on the 30th day of November, 1906, the said William Urquhart, the duly authorized liquidator of Aldecoa & Co., does hereby assign to said Hongkong & Shanghai Banking Corporation all the debts due and owing to said Aldecoa & Co. by its provincial debtors as follows:

750	Martin de Achaval	P22,855.26
	Salustiano Zubeldia	121,709.53
	Viuda e Hijos de F. Ecaño.....	68,511.54
	Francisco Rodriguez	9,700.51
	Carranceja y Portilla	6,835.24
	Manuel Veloso	129,748.65
	Acordagoicochea Hermanos	91,188.39
	Miguel Pelaez	88,427.68
		<hr/> P538,976.80

That said assignment of said above named debts is made to the said Hongkong & Shanghai Banking Corporation for the purpose of collection, with the obligation on the part of said Hongkong & Shanghai Banking Corporation to apply the net proceeds of said collections to the credit of said Aldecoa & Co. to the said Hongkong & Shanghai Banking Corporation according to the terms of the escritura hereto attached, marked "A";

For the purpose of carrying into effect said assignment, the said W. Urquhart, of the City of Manila, Philippine Islands, the duly elected liquidator of Aldecoa & Co., hereby makes, constitutes and appoints A. G. Stephen, Acting Manager of the Hongkong & Shanghai Banking Corporation, my true and lawful attorney in fact, for me and in my name, place and stead, and to my use as liquidator of Aldecoa & Co., to ask, demand, sue for and receipt for all sums of

money, debts and demands whatsoever, which are or shall be due, owing and belonging to Aldecoa & Co., or its successors and assigns, or detained from Aldecoa & Co. or me as the liquidator thereof, by each of the above named provincial debtors of Aldecoa & Co., or his or its legal representatives, successors or assigns; giving unto my said attorney full power to do everything whatsoever requisite and necessary to be done in the premises as fully as Aldecoa & Co., or I as the liquidator thereof, could if personally present, with full power of substitution; hereby ratifying and confirming all that my said attorney shall lawfully do or cause to be done by virtue thereof.

It is understood and agreed by and between the said W. Urquhart, as the liquidator of Aldecoa & Co., and the Hongkong & Shanghai Banking Corporation that the actual and necessary expenses incurred in the collection of said debts, including attorney's fees, which fees shall not exceed 10% of the amount recovered, shall be for the account of Aldecoa & Co., and that the net proceeds of such collections, after deducting all expenses of such collections, shall be paid to the Hongkong & Shanghai Banking Corporation and applied on the indebtedness of said Aldecoa & Co. to said bank.

It is further understood and agreed by and between the parties hereto that nothing herein contained shall in any wise be construed to alter the terms of said escritura or to release Aldecoa & Co., its sureties, or either of them, from any of the obligations incurred under and by virtue of said escritura, marked "A," and made a part hereof, and that the only purpose of this agreement is to make effective the obligations assumed by said Aldecoa & Co. to pay over to said Bank, to be applied to the indebtedness of said firm of Aldecoa & Co. to said Bank, the debts due said Aldecoa & Co. from its provincial debtors, when collected, as provided in said escritura hereto attached, marked "A," and the hypothecation executed on said 30th day of November, 1906, and to give unto the Agent of said Bank full power to collect said debts and apply the proceeds thereof to the liquidation of the overdraft of said Aldecoa & Co.

In witness whereof, we have hereunto set our hands and seals this thirtieth day of January, 1907.

ALDECOA & COMPANY,

In Liquidation,

(Sgd.) By WM. URQUHART, *Liquidator.*

THE HONGKONG & SHANGHAI
BANK'G CORP'N,

(Sgd.) By A. G. STEPHEN, *Acting Manager.*

Witness:

(Sgd.) JOHN W. HAUSSERMANN.

(Sgd.) JOSE MORENO LACALLE.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Be it remembered that on this 30th day of January, 1907,
 before me the undersigned, a Notary Public in and for the
 753 City of Manila, Philippine Islands, personally came W. Urquhart, known to me to be the same person who executed the foregoing agreement, and acknowledged that he executed said agreement as his free and voluntary act and deed for and on behalf of the said Aldecoa & Co., in liquidation, as the duly authorized and elected liquidator thereof. Cedula A-1,330,176, January 25, 1906, Manila, P. I.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,

Notary Public.

My commission expires December 31st, 1908.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Be it remembered that on this 30 day of January, 1907, before me the undersigned, a Notary Public in and for the City of Manila, Philippine Islands, Personally came A. G. Stephen, known to me to be the same person who executed the foregoing agreement, and acknowledged that he executed said agreement as his free and voluntary act and deed, for an- on behalf of the said Hongkong & Shanghai Banking Corporation as the Acting Manager thereof, Cedula A-1,479,705, Jan'y 18, 1907, Manila, P. I.

[NOTARIAL SEAL.]

(Sgd.)

D. R. WILLIAMS,

Notary Public.

My commission expires December 31st, 1908.

754 Defendant Isabel Palet Viuda de Aldecoa by herself and apart from the other defendants, answered the complaint in the following terms:

Heading and Title of the Case.

Comes now defendant Isabel Palet y Gabarro through her attorneys Chicote and Miranda, and answering the complaint of the Hongkong and Shanghai Banking Corporation as to that part which may refer to her, states:

That she admits paragraph I of the complaint.

That she admits paragraph II of the complaint.

That she admits part of paragraph III. to wit: that at all the dates mentioned in the complaint the exponent Isabel Palet, widow of Aldecoa, was a general partner of the firm of Aldecoa & Company; that she denies all the other facts alleged in said paragraph.

That she admits part of paragraph IV of the complaint, to wit: that the exponent on February 23, 1906, executed the public instru-

ment a copy of which is attached to the complaint, marked Exhibit "A" for the purpose of identification, and made part thereof; but she denies all the other facts contained in said paragraph.

That she admits part of paragraph V of the complaint, to wit: that the exponent on March 23, 1906, executed the public instrument copy of which is attached to the complaint, marked
755 Exhibit "B" for the purpose of identification, and made part thereof; but she denies all the other facts contained in said paragraph.

That she denies generally and specifically each and every one of the facts and allegations contained and specified in each and every one of paragraphs VI, VII, VIII, IX, X, XI and XII of the complaint.

As a special defense she alleges:

I.

That plaintiff Hongkong & Shanghai Banking Corporation in violation of the articles and stipulations contained in the instrument of February 23, 1906, which is mentioned in and made part of the complaint as Exhibit "A," entering into an agreement first with the manager of Aldecoa & Company and later with the liquidator of that firm, without said manager and liquidator having power or authority sufficient to do so, not only consented in that the debt of Aldecoa & Company should go beyond the limit agreed to with the exponent by the agreement of February 23, 1906, but voluntarily renounced to apply in payment of said debt the property of Aldecoa & Company which came to its hands for such purpose, and entered into
756 agreements and stipulations with the debtors of Aldecoa & Company extending the time of payment of their debts which were to be applied to the reduction of that credit.

II.

On or about the year 1907, the firm of Aldecoa & Company being in its period of liquidation obtained from its debtors the acknowledgment of their debts and large securities for the payment of the same, the total amount of said securities being over P500,000 covering with excess the credit of the plaintiff against Aldecoa & Company, all of which debts were due and payable; and Aldecoa and Company at the request of the plaintiff bank gave the latter a special commission to collect those debts and apply the proceeds of the same to the reduction of the pending account; but the Hongkong Bank failed afterwards to make use of the commission given to the same, confining itself to enter into an agreement with the debtors of Aldecoa & Company in regard to the gradual payment of their debts, and carrying the full amount of its credit, without any reduction, with the securities obtained in that manner.

III.

That this conduct of the plaintiff, inspired by the desire of bene-

757 fitting itself by the ac-umulation of interest to its credit without decreasing the securities given, but on the contrary, increasing them gradually has resulted to the damage of this defendant both as general partner and as mortgage guarantor of Aldecoa and Company.

IV.

That by the conduct and behavior of plaintiff bank as creditor of Aldecoa and Company, this firm, and therefore, this defendant, as subsidiary debtor, had been prevented to reduce and pay plaintiff's credit in due time and on the terms agreed upon, and are prevented now to convert those values, rights and actions of Aldecoa and Company into cash in order to comply with the agreement of February 23, 1906.

Wherefore, this defendant Isabel Palet y Gabarro asks this Court to render judgment adjudging and decreeing that the Hongkong Bank has no action against this defendant as mortgage guarantor of Aldecoa and Company; that the contracts of security, additional, as they are so called, to that of February 23, 1906, executed by the manager and by the liquidator of Aldecoa and Company, without legal authority to do so are null and void and without effect; that the liability of this defendant for the real amount which she may be
 758 obliged to pay as general partner of and subsidiarily to the firm of Aldecoa and Company be determined and limited, and that plaintiff corporation be ordered to receive and to apply in payment of its credit after a true and just liquidation the credits of Aldecoa and Company as to which it has made arrangement with the debtors, in the same manner and under the same terms as said plaintiff has agreed with them for the payment of their respective debts.

This defendant also prays for any other remedy which may be deemed just and equitable.

Manila, February —, 1912.

Attorneys for the Defendant Isabel Palet y Gabarro.

The defendants Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, jointly answered the complaint as follows:

Heading and Title of the Case.

The defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa answering the complaint as to that which may affect them, state:

That they deny generally and specifically each and every one of the allegations of the complaint.

759 And as a special defense they allege:

I.

That in the year 1896 they were minors, the eldest one of said defendants being 11 years old; they were fatherless orphan- and were under the patria potestad of their mother Doña Isabel Palet. That at that time, as they afterward learned, their mother formed with others a mercantile partnership under the firm name of Aldecoa and Company, in which partnership these defendants were included as industrial partners with a share in the profits of the firm's business, but being exempt from any obligation of working for the partnership and being also authorized to choose their place of abode wherever they might deem convenient. No capital was contributed or paid into the partnership by these defendants.

II.

These defendants making use of their rights and actions, and when they became aware that under and by virtue of said contract of partnership it was pretended to impose upon them obligations and liabilities which they never contracted or desired to contract, filed an action to have the said contract of partnership annulled in regard to these defendants, and in civil case No. 6088 of the Court of
760 First Instance of Manila, it was decided and decreed by final judgment dated September 5th, 1908, that the said contract of partnership and whatever acts and contracts had been executed subsequent to and in consequence thereof, were in whatever they should or might affect these defendants null and void and of no effect.

Wherefore, these defendants ask the Court that the complaint be dismissed in so far as it may seek to make them jointly liable with the firm of Aldecoa & Company in liquidation and as supposed general partners thereof for the claim of the plaintiff corporation, the Hongkong and Shanghai Banking Corporation.

Defendants Joaquin and Zoilo Ibañez de Aldecoa allege also in their favor and as a second special defense the following facts:

I.

That in the year 1897 these defendants, having been born in the Philippine Islands and being minors, the eldest of them being only at that time 12 years old, under the patria potestas of their mother Isabel Palet, who was then a resident of and legally domiciled in the City of Manila, Philippine Islands, left together with
761 their mother for the kingdom of Spain, coming back to the Islands also in company of their mother in the year 1903.

II.

In the year 1906 these defendants being still minors, since Joaquin would be only about 12 years and Zoilo 20 years old, and being

residents of the City of Manila, signed the public instrument which is attached to the complaint in this case marked plaintiff's Exhibit "A"; defendants allege that they were compelled to execute the said contract by the managers of the firm of Aldecoa & Company under the false pretense that these defendants were general partners of Aldecoa & Company and, therefore, liable jointly for all the obligations of the partnership and most especially for the credit then existing in favor of the plaintiff banking corporation, to the execution of which, said bank was about to proceed not only against the property of the partnership but also against the private property of the general partners thereof, unless the securities demanded by the bank consisting of the mortgage of the private property of Doña Isabel Palet and of these defendants, were not given to said bank.

III.

762 These defendants also allege that by virtue of said contract (plaintiff's Exhibit "A") no utility or benefit was accrued to them, but on the contrary, there was considerable damage caused to their private interest; the whole interest, benefit and utility of such contract accruing exclusively to the two contracting firms and to the capitalist partners of Aldecoa & Company and especially to Doña Isabel Palet, main and most important capitalist partner of this firm.

IV.

These defendants also allege that they had not the sufficient legal capacity to execute said contract and make it valid; inasmuch as although it was stated therein that these defendants were emancipated by virtue of a voluntary emancipation deed executed by their mother, and that they took part in the execution of said contract with the alleged consent of their mother, these defendants do hereby allege that such emancipation was null and void and even if it were valid and legal, the mother of these defendants had no authority or power under the law to consent to that execution by reason of legal incompatibility, to wit, because such contract was for the benefit of Doña Isabel Palet and these defendants were not assisted by any person duly authorized by law to supply their lack of capacity.

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V.

Based on the foregoing statements these defendants filed an action before this Court of First Instance for the annulment of said mortgage contract (plaintiff's Exhibit "A") in so far as it affected these defendants, and in civil case No. 6086 of this Court and under date of March 28, 1910, judgment was rendered decreeing that said mortgage contract was null and void and of no effect in regard to these two defendants.

VI.

Defendant Joaquin Ibañez de Aldecoa, also alleges that although

the judgment referred to in the preceeding paragraph was annulled and set aside by the same Court and in the same case by another judgment rendered thereafter on the 27 of January, 1911, declaring that said contract was valid and subsisting in regard to this defendant, said judgment has been appealed to the Supreme Court and is actually pending hearing and decision before said high Tribunal.

VII.

Both defendants allege, that by virtue of the facts above stated in the two preceeding paragraphs there is a *litis pendentia* between these two defendants and the firm of Aldecoa & Company in
764 liquidation and the Hongkong and Shanghai Banking Corporation who are parties in this case.

And as a third special defense these two defendants Joaquin and Zoilo Ibañez de Aldecoa also allege but only in default of the two foregoing special defenses, the following facts:

I.

That even if these defendants should be liable to plaintiff by virtue of said contract Exhibit "A" of the complaint, this obligation has been extinguished and these defendants have been released from the same for the following reasons:

(a) Plaintiff corporation in violation of the clauses contained in said contract entering into an agreement first with the manager and later with the liquidator of Aldecoa & Company—without said manager and liquidator having any authority or power sufficient to do so,—not only consented that the debt of Aldecoa & Company should go beyond the limit agreed to in said contract, but voluntarily renounced to apply, in payment of said debt, property of the debtor firm which came to its hands for such purpose, and entered into agreements and stipulations with the debtors of the debtor
765 firm extending the time of payment of their debts which were to be applied to the reduction of that credit.

(b) In the year 1907, the firm of Aldecoa & Company obtained from its debtors the acknowledgment of their debts and securities for the payment of the same, the total amount of said securities being over P500,000.00, covering with excess the credit of the bank; and Aldecoa & Company, at the request of the plaintiff, gave the latter a special commission to proceed to collect those debts and apply the proceeds of the same to the reduction of the account; but the bank failed to make use of the commission given and agreed with the debtors of Aldecoa & Company as to the gradual payment of their debts, carrying at the same time the full amount of its credit against this firm with the securities obtained in that manner.

II.

By reason of plaintiff's conduct the main obligation constituted

by said contract Exhibit "A" of the complaint has been tacitly novated or modified making it also impossible for the guarantors of said obligation to subrogate themselves in place of Aldecoa & Company in the condition in which this firm was before the act of the Bank to reimburse themselves for whatever they might be obliged to pay by reason of said mortgage contract.

766 Wherefore, these defendants ask the Court to dismiss the complaint with costs against the plaintiff.

Manila, February 6, 1912.

_____,
Attorneys for Defendants Joaquin,
Zoilo, and Cecilia Ibañez de Aldecoa.

In addition to their foregoing answer and on the same date, said defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa, filed, with the leave of the Court and without objection on the part of plaintiff, a cross-complaint against plaintiff Hongkong and Shanghai Banking Corporation and against the defendants Aldecoa and Company in liquidation and the liquidator thereof, William Urquhart; said cross-complaint being as follows:

Heading and Title of the Case.

Cross-complaint.

Come now Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, once more, before this Court and with leave of the same, file against the Hongkong and Shanghai Banking Corporation, William Urquhart and Aldecoa
767 and Company in liquidation, a complaint based in the following facts, to wit:

I.

Plaintiffs are all of lawful age and residents of the City of Manila, Philippine Islands.

II.

That defendant Hongkong and Shanghai Banking Corporation is a corporation duly organized and existing under and by virtue of the laws of the British Colony of Hongkong, and duly registered and licensed to do business in the Philippine Islands in accordance with the laws thereof. The defendant Aldecoa & Company in liquidation is a general mercantile partnership (sociedad mercantil regular colectiva) which on December 31, 1906, this being the date of expiration of its social term, entered into liquidation under the direction of Mr. William Urquhart, who at present acts as liquidator of Aldecoa and Company and is another of the defendants herein.

III.

In the month of February of the year 1897, Doña Isabel Palet the mother of these plaintiffs, making use of the right reserved to her in the articles of partnership of Aldecoa & Company of 768 December 31, 1896, paid into and deposited with the house of said firm the important amount of P398,355.45 4/. in cash, this sum being the property of and belonging exclusively to these plaintiffs, under the agreement that one half of this deposit could be withdrawn by or reimbursed to the depositors at any time and the other half could only be reimbursed within the term of six years from January 1st, 1898, and that such credits would be preferred credits and that the firm of Aldecoa & Company could not contract any obligation which could be preferential to said credit which would in the meantime earn the interest of five per cent per annum which later on was raised to six per cent.

IV.

On December 31st, 1906, the firm of Aldecoa & Company entered into liquidation and on that date the credit of these plaintiffs reached the sum of P143,369.37, which, with the accumulated interest, amounted on May 16, 1908, to P155,127.31.

V.

On or about said date plaintiffs herein filed an action against Aldecoa & Company to recover the balance of the deposit they had with said firm, and in civil case No. 6087 of this Court judgment was rendered finding and determining the amount of plaintiffs 769 credit and sentencing Aldecoa & Company in liquidation to the payment of the same. In said judgment it was also decreed that the credit of these plaintiffs was preferential and it was to earn an interest of six per cent per annum.

VI.

In the execution of the judgment, the judgment creditors did not find sufficient property in possession of Aldecoa & Company liable on execution to cover the whole amount of said judgment; but all the most important and most valuable property of said firm were delivered or mortgaged to the Hongkong and Shanghai Banking Corporation the defendant herein, as security for the payment of a certain credit acknowledged by public instrument executed on February 23, 1906, under and according to the agreements and contracts executed first by the Manager and afterwards by the liquidator of Aldecoa & Company. These contracts and instruments are as follows:

(a) Contract of December 23, 1906, a copy of which is attached to this record marked Exhibit "C" of the complaint of the Hongkong

and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(b) Contract of June 13, 1907, a copy of which is attached to this record marked Exhibit "E" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(c) Contract of January 30, 1907, a copy of which is attached to this record marked Exhibit "G" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(d) Contract of June 13, 1907, a copy of which is attached to this record marked Exhibit "F" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

(e) Contract of August 30, 1907, a copy of which is attached to this record marked Exhibit "D" of the complaint of the Hongkong and Shanghai Banking Corporation, the contents of which are made part of this allegation.

VII.

Each and every one of the contracts mentioned in the preceeding paragraphs were executed by Aldecoa & Company in favor of the Hongkong Bank without power or authority to do so, in violation of the agreement entered into by and between Doña Isabel Palet on behalf of these plaintiffs and Aldecoa & Company, referred to in paragraph III of this complaint, and in fraud and to the prejudice of these plaintiffs who were preferred creditors of Aldecoa & Company in the sum of P149,492.77; and they were executed by the manager and the liquidator of Aldecoa & Company without power or authority to do so.

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VIII.

In civil case No. 7493 of this Court of First Instance of Manila, these plaintiffs filed an action to have the contract mentioned in clause (e) of paragraph V of this complaint declared null and void, upon the same grounds and allegations as those set forth in the preceeding paragraph; and the Court on the 31st of August, 1910, rendered judgment finding and decreeing that for the above reasons said contract was null and void and that the property mortgaged by virtue thereof in favor of the Bank should have to be applied to the payment of the judgment secured by plaintiffs against Aldecoa & Company in civil case No. 6087.

IX.

Said judgment, however, has not been executed by reason of the appeal taken against the same by the Hongkong Bank, and is now pending before the Supreme Court of the Philippine Islands; but even should said judgment be affirmed its effect would not cover the total amount of the judgment rendered in civil case No. 6087 since

there would still remain an unpaid balance of about P70,000.00 Philippine currency.

X.

772 The firm of Aldecoa & Company in liquidation, by virtue of the transfer and mortgage of its property to the Hongkong and Shanghai Banking Corporation as stated in the foregoing paragraph is to-day absolutely insolvent, and these plaintiffs have no other means to recover their credit but through the annulment of said transfer and mortgage.

Wherefore plaintiffs pray for judgment whereby this Court shall decree:

(a) That the credit of these plaintiffs against Aldecoa & Company in liquidation, acknowledged and decreed by the judgment rendered in civil case No. 6087 of this Court, has preference over the credit of the Hongkong and Shanghai Banking Corporation claimed by the complaint which has originated this case.

(b) That the mortgage contracts executed by Aldecoa & Company in favor of said Banking Corporation, mentioned in clauses (a), (b), (c) and (d) of paragraph V of this complaint, are null and void in regard to *this* plaintiffs and in so far as they may be sufficient to cover the judgment rendered in civil case No. 6087 of this Court.

(c) That the property which is the object of said contracts be declared liable preferentially to the payment of said judgment, or in other words, that the proceeds of the sale of the same by the sheriff of Manila, be applied in the first place to satisfy the judgment rendered in favor of these plaintiffs in civil case No. 6087.

Manila, February 2, 1912.

CHICOTE AND MIRANDA,

*Attorneys for Joaquin, Zoilo,
and Cecilia Ibañez de Aldecoa.*

The case having been called for trial the parties offered their oral and documentary evidence and during the trial defendants objected to certain evidence offered by plaintiff- and exceptions were taken against the rulings of the Court overruling said objections and admitting the evidence objected, as it all appears from the transcript of the testimony taken during the trial and made part of this Bill of Exceptions.

After the written arguments were filed by the parties in this case, the Court rendered its decision as follows:

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Decision.

(Title of the Case Omitted.)

For Plaintiff: Messrs. John W. Haussermann and F. C. Fisher.

For Defendants: Isabel Palet, Joaquin Aldecoa, Zoilo Aldecoa, and Cecilia Aldecoa: Mr. Vicente Miranda.

For defendant, Aldecoa & Co.: Mr. Antonio Sanz.

For Intervenor, Wm. Urquhart: Mr. Antonio Sanz.

LOBINGIER, J.:

This is an action by the plaintiff corporation against the defendants, Aldecoa & Co., in liquidation, Doña Isabel Palet, Don Joaquin Aldecoa, Don Zoilo Aldecoa and Doña Cecilia Aldecoa. Plaintiff seeks a money judgment against the defendants Aldecoa & Co., as principal debtor, and the other defendants as subsidiary debtors in solidum, and a decree of foreclosure with respect to the mortgage executed by certain of the defendants.

The defendant Aldecoa & Co., in liquidation, interposes a general denial and counterclaim for damages alleged to have been caused them by the plaintiff by inducing certain of the customers of the defendant firm to discontinue business relations with them, and for an accounting for the proceeds of certain collections alleged to have been made by the plaintiff Bank under authority from the defendant Aldecoa & Co.

The defendant Isabel Palet interposes a general denial and a special defense, in which she alleges that she has been prejudiced by the failure of plaintiff Bank to realize upon certain credits
775 owing to Aldecoa & Co., which she alleges have been assigned by Aldecoa & Co. to the plaintiff corporation and which the latter has failed to collect and apply to the discharge of its credit against Aldecoa & Co.

The defendants Joaquin, Zoilo and Cecilia Aldecoa make a general denial, and plead as special defenses:—

(a) That they have been relieved from their liability as partners of Aldecoa & Co. by a judgment rendered in this court in case 6088;

(b) That there is another suit pending between the plaintiff corporation and the defendants Joaquin and Zoilo Aldecoa in which the validity of the mortgages set out in plaintiff's exhibit "A" is drawn into question in so far as it affects the defendants Joaquin and Zoilo Aldecoa;

(c) That plaintiff has failed to collect certain credits said to have been assigned to it by Aldecoa & Co. for collection and application to the discharge of the indebtedness sued upon, which credits, it is alleged would have been sufficient to discharge the said indebtedness had they been collected.

The defendants Joaquin Aldecoa, Zoilo Aldecoa and Cecilia Aldecoa also filed a cross-complaint (record 227) in which they allege that they are creditors of Aldecoa & Co. in the sum of *some* P70,000 as a balance due upon a certain judgment recovered by them against the said firm of Aldecoa — Co.; that this claim is entitled to preference over that sued upon by plaintiff; that the mortgages executed by the defendant Aldecoa & Co. in favor of plaintiff corporation, incorporated by reference into plaintiff's complaint Exhibits "C,"
776 "E," "G," "F" and "D," were void as against the cross-complainants. This cross-complaint the plaintiff corporation answered making a general denial (record page 114).

Mr. William Urquhart filed a complaint in intervention (record 147) in which he sets forth that the defendant Aldecoa & Co. is indebted to him in the sum of P20,976.68 for money de-

posited by him with said firm, and for the further sum of P9,868.92 for salary due him as liquidator up to the time of the filing of his complaint of intervention and for such salary as might accrue thereafter at the rate of P500 per month, and asks that he be treated as a preferred creditor of Aldecoa & Co. with respect to the plaintiff for these amounts. The plaintiff excepted to the order permitting the filing of this complaint in intervention and filed an answer thereto which contains a general denial of the allegations of the complaint in intervention.

In the course of the trial it was stipulated in open court (record Page 574) that amended pleadings might be filed by the parties. In pursuance of this agreement amended pleadings were presented by the plaintiff and all the defendants, but the substance of the issues was not changed thereby. The intervenor, Mr. Urquhart, elected to stand upon his original pleading.

Upon the suggestion of the death of the defendant Alejandro S. Macleod the proceeding as to him was discontinued.

Upon the pleadings and proof the Court makes the following findings of fact:—

I.

That the Hongkong & Shanghai Banking Corporation is a foreign banking corporation duly organized to engage in business in the Philippine Islands, and doing business therein at all of the times hereinafter mentioned.

II.

That Aldecoa & Co. is a general mercantile partnership (sociedad mercantil regular colectiva) organized in accordance with the Code of Commerce of the Philippine Islands under articles set forth in a certain public instrument executed in Manila the 31st day of December, 1898, and duly recorded in the Mercantile Register of this city (Exhibit "H").

III.

That the defendant Doña Isabel Palet *which she* was a widow, of lawful —, and with full capacity to contract became one of the capitalist partners of the said firm of Aldecoa & Co. organized as above stated, by sign- the articles of partnership hereinbefore referred to and continued to be such capitalist partner until it went into liquidation on the 31st day of December, 1906.

IV.

That the defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet are the children of the defendant Doña Isabel Palet, and of her deceased husband, Don Zoilo Ibañez de Aldecoa, and at the time of the execution of the articles of partnership

above referred to (Exhibit "H") were minors subject to the patria potestas of their said mother.

V.

That the defendant Doña Isabel Palet and her deceased husband, Don Zoilo Ibañez de Aldecoa were native of Spain of Spanish parentage (Rec. p. 567); that the said Zoilo Ibañez de Aldecoa, husband of the defendant Doña Isabel Palet, died in the Philippine Islands prior to the American occupation (Rec. p. 568); that the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet were born in Manila in March, 1884, and July, 1885, respectively (record page 567); that said defendants and their mother, the defendant Doña Isabel Palet, were absent from the Philippine Islands during all the period embraced between the end of the year 1897 and the beginning of the year 1903 (Record page 568).

VI.

That on the 31st day of July, 1903, while in the City of Manila, P. I., the defendant Doña Isabel Palet executed in favor of her sons, the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet, the instrument introduced in evidence herein as plaintiff's exhibits "T" (Rec. p. 305) and "U" (Rec. p. 311) whereby the said defendant

Isabel Palet emancipated the said defendants. That at the time of the execution of the said instruments the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet were each over the age of 18 years; that the said defendants expressed their acceptance of the emancipation conferred upon them by their mother by signing the said acts of emancipation above referred to.

We do not think that it can be successfully contended that the provisions of the Civil Code in which the patria potestas is set forth have been repealed. The patria potestas is one of the most ancient rights recognized by the civil law. Existing long before the Twelve Tables, it is expressly recognized in that famous collection and continued to exist with slight modifications during the entire life of the Roman Law. When that system was imported into Spain the patria potestas came with it and is recognized in the Siete Partidas (IV 18) in all its vigor. As the latter formed the basis of the Philippine common law it is clear that the patria potestas did not depend upon any provision of the Civil Code, having been in force in the Philippine Islands for centuries before that instrument was extended here. To hold that a doctrine of such antiquity and importance, and constituting such an essential feature of the civil law and domestic relations is abrogated by a doubtful provision of the new Code of Civil Procedure, would be revolutionary. Sections 551 and 553 of said code which are pretended to have effected such repeal are not necessarily inconsistent with the patria potestas. They should be harmonized, if possible (U. S. v. Reyes, 10 Phil. 427), and we think they can be. At least the Supreme Court has recognized, the patria potestas as existing since the present

Code of Procedure came into force (*Mendoza v. Ibañez*, 4 Phil. 666; *Tuazon v. Orozco*, 5 Phil. 61; *Reyes v. Alvarez*, 8 Phil. 725). If a doctrine so startling as contended for by counsel for defendants is to be announced, it should be by the Supreme Court, and not by this court. Besides, we are disposed to agree with counsel for plaintiffs that the defendants, Joaquin and Zoilo Aldecoa and their mother, being Spanish subjects were governed in this matter by the law of Spain (*Bosque v. U. S.*, 209 U. S. 96; *Martinez v. Castro*, 2 P. R. Fed. 523; *Rios v. Bursat*, 2 P. R. Fed. 192, affirmed in 209 U. S. 283, and also that they have ratified the contract of partnership. Hence we further find:

VII.

That at the time of the execution by the defendants Isabel Palet and Joaquin and Zoilo Ibañez de Aldecoa y Palet of the acts of emancipation above referred to, the law of the Kingdom of Spain regarding the emancipation of minors, and the effects of such emancipation with respect to the latter, and by which the nationality, status and capacity of Spanish subjects residing in foreign countries was to be governed, was that contained in Articles 9, 18, 154 to 173, inclusive, and 314 to 319, inclusive, of the Civil Code of the Kingdom of Spain, which said articles are the same as the articles under the same numbers of the Civil Code in force in the Philippine Islands on the 14th day of August, 1898.

VIII.

That after the execution by the defendant Isabel Palet and the defendants Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet of the acts of emancipation above mentioned (Exhibits "T" and "U") the two defendants last named participated in the management of Aldecoa & Co. as partners by being present at and voting at meetings of the partners of the Company upon matters connected with its affairs (See plaintiff's Exhibits "W," "X," "Y" and "Z," record pages 322 to 327 inclusive).

IX.

That on the 23rd day of February, 1906, the defendants Aldecoa & Co., Doña Isabel Palet, Don Joaquin Ibañez de Aldecoa y Palet, Don Zoilo Ibañez de Aldecoa y Palet and the plaintiff corporation entered into an agreement by which the latter granted to Aldecoa & Co. a credit in account current up to the sum of P475,000 upon the terms and conditions set forth in the written instrument executed on that date by said parties, a copy of which, admitted by the defendants to be correct, is in evidence herein as plaintiff's Exhibit "A," which said Exhibit "A" is hereby incorporated into these findings by reference.

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X.

That thereafter, to wit, on the 23rd day of March, 1906, the plaintiff corporation and the defendants Isabel Palet, Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Aldecoa & Co. executed an additional contract supplemental to the contract of February 23, 1906, above referred to as Exhibit "A," for the purpose of increasing the security given the plaintiff corporation for the performance of the obligations in its favor undertaken by the defendant Aldecoa & Co. under the contract of February 23, 1906 (Exhibit "A"), correcting an error in the description of certain real property mortgaged to the plaintiff bank by the said instrument of February 23, 1906, and determining the amount for which each of the mortgaged properties should be liable, all of which appears more particularly in the said supplemental contract of March 23, 1906, a copy of which, admitted by defendants to be correct, is in evidence herein as plaintiff's Exhibit "B" (record page 181) and is hereby incorporated by reference into these findings.

XI.

That the mortgages created by said contracts of February 23, 1906, (Exhibit "A") and March 23, 1906 (Exhibit "B") were duly recorded in the Register of Deeds of the City of Manila.

XII.

That the real property of the defendant Doña Isabel Palet mortgaged to the plaintiff corporation by said instrument of March 23, 1906 (Exhibit "B"), was, at the instance of the said defendant, registered under the provisions of the Land Registration Act subject to the mortgage thereon in favor of plaintiff by decree 1701 of the Court of Land Registration dated March 8, 1907, in which decree, a certified copy of which is in evidence herein as plaintiff's Exhibit "K" (record page 277), the said property is described as follows, to-wit:

Un terreno, con las edificaciones existentes en el mismo, situado en la Calle Real Nos. 561 y 563 esquina a la calle Cortabitarte, Distrito de Malate.—Linda por el No. y So. con propiedad de la solicitante y coherederos; por el N. E. con la Calle Real; y por el S. E. con la calle Cortabitarte.—Partiendo de un punto marcado "a" en el plano, cuyo punto es el extremo So. del chaflán situado en la intersección de la línea So. de la Calle Real y la línea No. de la Calle Cortabitarte; y desde dicho punto "A" S. 66 grad. 21' 24" O., siguiendo dicha línea anterior, veinte y cinco metros con cuarenta y seis centímetros (25.46) al punto "B;" desde este punto N. 20 grad 33' 36" O., veinte y dos metros con setecientos diez y nueve milímetros (22.719) al punto "C;" desde este punto N. 68 grad. 32' 49" E., veinte y nueve metros con novecientos cuarenta y ocho milímetros (29.948) al punto "D" desde este punto S. 19 grad.

10 11 "E," siguiendo la línea So. de la Calle Real, diez y ocho metros con doce centímetros (18.12) al punto "E" desde este punto S. 27 grad. 14' 22" O., siguiendo el ya citado chaflán, cinco metros con cincuenta y un centímetros (5.51) al punto de partida; midiendo una extensión superficial de seiscientos cincuenta metros con cincuenta y cuatro decímetros cuadrados (650.54).—Todos los puntos nombrados se hallan marcados en el plano, la orientación seguida es la magnética; fecha de la medición 7 de Octubre de 1906.

XIII.

That on the 6th day of November, 1906, the defendants Isabel Palet, Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Cecilia Ibañez de Aldecoa y Palet applied to the

784 Court of Land Registration for the registration of their title to the real property described in paragraph 4 of the deed of March 23, 1906, herein referred to as Exhibit "B," in which they state that the undivided three-fourths of the said properties belonging to the defendants Isabel Palet, Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet was subject to the mortgage in favor of the Hongkong and Shanghai Banking Corporation, plaintiff herein, to secure the sum of P203,985.79 under the terms of said deed of March 23, 1906 (See plaintiff's Exhibit "L," record page 283). Pursuant to this petition the said Court of Land Registration, by decree dated the 8th day of September, 1907, in evidence herein as plaintiff's Exhibit "L1" (record page 283), registered the title of the applicants to the said property subject, with respect to the undivided three-fourths interest therein pertaining to the defendants Isabel Palet, Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet, to the mortgage in favor of the plaintiff herein to secure the sum of P203,985.97. A description of the said property, as set forth in said decree, is as follows, to wit:

Un terreno con las edificaciones levantadas en el mismo, situado entre la Calle Real Nos. 545, 555 y 557 y la Calle Cortabitarte Nos. 1 al 7, Distrito de Malate.—Linda por el No. con un callejón sin nombre que separa esta propiedad de la de Silvino Lopez Tuñon y con propiedad de Segundo Javier; por el N. E. con la calle Real; por el E. con propiedad de Isabel Palet y Gabarro; por el S. E. con la calle cortabitarte; y por el So. con la playa de la

785 bahía de Manila.—Partiendo de un punto marcado "b" en el plano, cuyo punto se halla al S. 66 gds. 21' 24" O. y veinte y cinco metros con cuarenta y seis centímetros (25.46) del extremo So. del chaflán situado en la intersección de la línea No. de la calle Cortabitarte y la línea So. de la calle Real; y desde dicho punto "b" S. 66 gds. 21' 24" O., trece metros con quinientos treinta y nueve milímetros (13.539) al punto "c"; desde este punto S. 64 gds. 25' 25" O., treinta y siete metros con setecientos ochenta y ocho milímetros (37.788) al punto "d"; desde este punto S. 64 gds. 25' 25" O., veinte y cinco metros con treinta y seis centímetros (25.36) al punto "e"; desde este punto N. 23 gds. 54' 54" O., setenta y nueve

metros con seis cientos once milímetros (79.611) al punto "f"; desde este punto N. 69 gds. 49' 09" E., tres metros con cincuenta centímetros (3.50) al punto "g"; desde este punto S. 23 gds. 54' 54" E., ochenta y cinco centímetros (0.85) al punto "h"; desde este punto N. 69 gds. 49' 09" E., treinta y siete metros con ochocientos noventa y cuatro milímetros (37.894) al punto "i"; desde este punto N. 24 gds. 40' 41" O., catorce metros con ciento cincuenta y tres milímetros (14.153) al punto "j"; desde este punto N. 69 gds. 27' E., sesenta y ocho metros con treinta y tres milímetros (68.038) al punto "k"; desde este punto S. 24 gds. 17' 34" E., treinta y cuatro metros con ciento treinta y dos milímetros (34.132) al punto "l"; desde este punto S. 22 gds. 30' 3" E., diez y siete metros con novecientos noventa y seis milímetros (17.996) al punto "m"; desde este punto S. 19 gds. 10' 11" E., diez metros con novecientos setenta y cinco milímetros (10.975) al punto "n", desde este punto S. 68 gds. 32' 49" O., veinte y nueve metros con novecientos cuarenta y ocho milímetros (29.948) al punto "o"; desde este punto S. 20 gds. 33' 36" E., veinte dos metros con setecientos diez y nueve milímetros (22.719) al punto de partida; midiendo una extensión superficial de ocho mil trescientos treinta y cinco metros con diez decímetros cuadrados (8,335.10).—Las líneas del punto "b" al "c" siguen el lado No. de la calle Cortabitarte, del "c" al "f" la playa de la Bahía de Manila, del "f" al "k" el lado S. E. de un callejón sin nombre y del "k" al "n" el lado So. de la calle Real.—Todos los puntos nombrados se hallan marcados en el plano y sobre el terreno las líneas que forman el perímetro con muros propios a excepción de las líneas "n-o" y "o-b" que lo están con muros medianeros; la orientación seguida es la magnética; fecha de la medición, 7, 14 y 21 de Septiembre de 1906.

XIV.

786 That on the 22nd day of December, 1906, the defendant Aldecoa & Co., by public instrument executed before a Notary Public of the City of Manila, as additional security for the performance of the obligations assumed by them in favor of the plaintiff corporation under the terms of the contracts herein referred to as Exhibit- "A" and "B," mortgage- to the plaintiff bank the right of mortgage (derecho real de hipoteca) pertaining to the said defendant Aldecoa & Co. upon certain real property in the Province of Albay, P. I., mortgaged to the defendants Aldecoa & Co. by one Salustiano Zubeldia to secure an indebtedness to that firm, all of which appears more particularly from a copy of the said public instrument in evidence herein as plaintiff's Exhibit "C" (record page 184), and admitted by defendants to be correct, which said exhibit is hereby incorporated by reference into these findings. Subsequently to the execution of the instrument referred to herein as Exhibit "C," Zubeldia caused his title to the mortgaged property to be registered under the provisions of the Land Registration Act subject to a mortgage to the defendant Aldecoa & Co. to secure the sum of P103,943.84, and to the mortgage of the mortgage right of Aldecoa & Co. to the plaintiff corporation, all of which appears more fully from the certificate

of title issued to the said Zubeldia and the indorsements thereon in evidence herein as Plaintiff's Exhibit "M" (record page 286), to

787 which reference is hereby made as part of these findings. In the said certificate of title the property mortgaged by the said Salustiano Zubeldia is described as follows:—

Un terreno con las edificaciones y mejoras existentes en el mismo, situado en la calle Padré Prieto, Municipio de Tabaco.— Linda por el N. E. con propiedad de los herederos de Ceferino Aramburo; por el S. E. con propiedades de Mariano Villanueva y Fausto Ormaechea; por el So. con propiedad de Modesto Bromeco y por el No. con la calle Prieto. Partiendo de un punto marcado "A" en el plano, cuyo punto se halla a los 84 gds. doscientos setenta y seis metros con veinte y seis centímetros (276.26) y 199 gds. 30' veinte y dos metros con cinco centímetros (22.05) de la casa municipal; y desde dicho punto "A" 218 gds. cuarenta y Cuatro metros con veinte y tres centímetros (44.23) al punto "B"; desde este punto 222 gds. siete metros connoventa y siete centímetros (7.97) al punto "C"; desde este punto 144 gds. veinte y siete metros con treinta y ocho centímetros (27.38) al punto "D"; desde este punto 147 gds. veinte y siete metros con cuarenta y tres centímetros (27.43) al punto "E"; desde este punto 66 gds. veinte y cinco metros con veinte y ocho centímetros (25.28) al punto "F"; desde este punto 66 gds. treinta y ocho metros con cinco centímetros (38.05) al punto "G"; desde este punto 316 gds. treinta y tres metros con cuarenta y nueve centímetros (33.49) al punto "H;" desde este punto 317 gds. 30' veinte y dos metros (22) al punto "I"; desde este punto 318 gds. 30' veinte y seis metros con setenta y siete centímetros (26.77) al punto de partida; midiendo una extensión superficial de tres mil setecientos setenta y cuatro metros cuadrados (3.774).—Las líneas del punto "A" al "C" siguen al lado S. E. de la calle P. Prieto.—Todos los puntos nombrados se hallan marcados en el plano; la orientación seguida es la magnética; fecha de la medición 15 de Noviembre de 1906.

XV.

That on the 31st day of December, 1906, the defendant firm Aldecoa & Co. went into liquidation on account of the expiration of the term for which it had been organized, and the intervenor, Mr. William Urquhart, was duly elected by the partners as liquidator, and by resolution dated January 24, 1907, he was granted the authority expressed in said resolution, a copy of which, admitted by the defendants to be correct is in evidence herein as plaintiff's

788 Exhibit "G" (record page 270) and is hereby incorporated by reference into these findings.

XVI.

That on the 13th day of June, 1907, at the request of the defendant Aldecoa & Co., and of the defendants Isabel Palet, Joaquin Ibañez de Aldecoa y Palet and Zoilo Ibañez de Aldecoa y Palet and to enable the said defendant Aldecoa & Co. to ob-

tain an attachment upon the property of one Alejandro S. Macleod in a suit then about to be brought against the said Macleod by Aldecoa & Co. for the purpose of recovering from him certain shares of the Pasay Estates Co., Ltd., the plaintiff bank undertook and agreed to provide an attachment bond in the required sum of P50,000 upon the condition and agreement that the proceeds of the suit against the said Macleod, after deducting the cost of the proceeding, should be applied in their entirety to the discharge pro tanto of the liability of Aldecoa & Co., to the plaintiff corporation; that the instrument of mortgage of February 23, 1906, referred to herein as Exhibit "A" was incorporated by reference into the said agreement of March 13, 1907. One of the duplicate originals of the said agreement of March 13, 1907, admitted by defendants to be genuine, is in evidence herein as plaintiff's Exhibit "V" (record page 314) and is hereby incorporated by reference into these findings.

This contract (Exhibit "V") was signed by the defendant Joaquin Ibañez de Aldecoa y Palet personally, by William Urquhart, as liquidator of Aldecoa & Co., and by Mr. Jose Maria Ibañez de Aldecoa as attorney in fact of the defendants Isabel Palet and Zoilo Ibañez de Aldecoa y Palet, under the authority conferred upon him by letters of attorney in evidence herein (record page 541) stipulation record page 619) as Plaintiff's Exhibit CCC.

XVII.

That as the result of the litigation between Aldecoa & Co. and A. S. Macleod the former became the owner through a compromise agreement executed in Manila the 14th day of August, 1907, a copy of which forms part of defendants' Exhibit 3 (record pages 370 to 375, inclusive), of the shares of the Pasay Estates Co., Ltd., referred to in the contract of March 13, 1907 (Exhibit "V"), and on the 30th day of August, 1907, Mr. William Urquhart, as liquidator of Aldecoa & Co., under the authority vested in him as liquidator, and in compliance with the terms of the contract of June 13, 1907, above referred to mortgaged to the plaintiff corporation by way of additional security for the performance of the obligations assumed in favor of plaintiff under the terms of the contracts referred to herein as Exhibits "A" and "B," the 312 shares of the stock of the Pasay Estates Co., Ltd., acquired by Aldecoa & Co. as above stated, upon the terms set forth in the deed of mortgage of said shares in evidence herein as plaintiff's Exhibit "D" (record page 194), which is hereby incorporated by reference into these findings.

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XVIII.

That on the 31st day of March, 1907, the defendant Aldecoa & Co., by public instrument executed before a notary public in the City of Manila, as additional security for the performance of the obligations assumed by them in favor of the plaintiff corporation

under the terms of the contracts herein referred to as Exhibits "A" and "B," mortgaged to the plaintiff bank the right of mortgage (derecho real de hipoteca) pertaining to said firm of Aldecoa & Co. upon certain real estate in the Province of Ambos Camarines, Philippine Islands, mortgaged to the defendant Aldecoa & Co. by one Andres Garchitorena y Medina to secure an indebtedness to that firm of P71,915.07, of which a balance of P20,282.19 was still due Aldecoa & Co. from the said Garchitorena at the time of the execution of the said instrument, all of which *appeals* more particularly from the copy of said public instrument in evidence herein as plaintiff's Exhibit "E," (record page 199) admitted by defendants to be correct, and which is hereby incorporated by reference into these findings. The mortgage so created in favor of the defendant bank upon the mortgage right of Aldecoa & Co. upon said real property has been duly recorded in the Register of Deeds of the Province of Ambos Camarines. The real estate affected by 791 the said mortgage is described as follows:

Finca rústica consistente en un terreno destinado a pastos de animales proximos a las Visitas de Gibgos, Taytay y Pamboan en la provincia de Ambos Camarines; linda por el Norte con terrenos de Don Eulalio Fernandez; por el Este con el mar y manglares del Estado; por el Sur con pastos de Don Mariano Villamor el río denominado Tuytuy que desemboca en la Visita de Pamboan y por el Oeste, con el puerto de Sisiran; midiendo una extensión superficial de novecientos cincuenta y cuatro hectáreas.

Otra finca rústica, consistente en un terreno enclavado en el sitio denominado Salvación de la Visita de Hingaroy del pueblo de Tingaon de la provincia de Ambos Camarines de una superficie de seiscientos siete hectáreas veintiseis áreas, de las cuales cuatrocientos ochenta y seis hectáreas y setenta y nueve áreas son en una parte cogonales y por otra sembrados de abacá y ciento veinticuatro hectáreas y cuarenta y siete áreas de cogonal cuyos linderos son; al Norte bosques del Estado, terrenos abacales de Don Paciano Badiran, Don Luis Jallores, arroyo Tinangay y arroyo Talanquiso, al Sur con el río Osini, unión del daso con el Osini y el citado río Daso, por el Este con el río Gigarón y terreno de Don Juan Filipino, y por el Oeste con terreno de Pedro Barrubia y el citado río Osini. Esta finca se halla inscrita a los folios 16 y 8, libros 1.º y 1.º del pueblo de Caramaon y Tigaon respectivamente obrantes a los folios 30 vuelto y 25 vuelto, 247 al 248, inscripciones segundas en el Registro de la Propiedad de Camarines Sur.

XIX.

That on the 31st day of March, 1907, the defendant Aldecoa and Company by public instrument executed before a notary public of the city of Manila, as additional security for the performance of the obligations assumed by them in favor of the plaintiff corporation under the terms of the contracts herein referred to

792 as Exhibits "A" and "B," mortgaged to the plaintiff bank the right of mortgage pertaining to said firm of Aldecoa & Co. upon certain real property in the Province of Ambos Camarines mortgaged to the defendant Aldecoa & Company by the firm of Tremoya Hmnos, and by Don Liborio Tremoya, respectively, to secure an indebtedness of Tremoya Hermanos to said firm of P43,117.40, and of Liborio Tremoya personally of P75,463.54, all of which appears more particularly from the copy of the said public instrument in evidence herein as Plaintiff's Exhibit "F" (record page 208), admitted by the defendants to be correct, and which is hereby incorporated by reference into these findings. The mortgage so created in favor of the plaintiff bank upon the mortgage right of Aldecoa & Co. upon the said real property has been filed for record with the Register of Deeds of the Province of Ambos Camarines. The real estate affected by the said mortgages is described as follows:

Properties Mortgaged by Tremoya Hnos.

A. Finca urbana, compuesta de casa habitación, de piedra en la planta baja y de madera los altos, y camarines con prensa para abacá, y almacén todo en una sola parcela cercada con muro de cal y canto, ubicada en el pueblo de San José, provincia de Ambos Camarines, Islas Filipinas, mide el solar en que está edificada la finca descrita, una extensión superficial de diez y nueve áreas teniendo de frente cincuenta metros. Linda al Norte con la calle de Milaor, al Sur con terrenos de la Iglesia, al Este con el solar de Don Tomás R. Perez y al Oeste con la calle de San Vicente; adquirida por compra a Don Andres Garchitorena; esta finca fué justipreciada en veinte mil (P20,000) pesos Filipinos y se fijó su responsabilidad en diez y seis mil novecientos diez y siete (P16,917.00) pesos Filipinos por capital e intereses correspondientes a esta suma, más setecientos pesos Filipinos (P700.00) para el pago de gastos y costas que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

793 B. Finca urbana, sita en el pueblo de San José provincia de Ambos Camarines, Islas Filipinas, compuesta de un camarín, que mide siete metros sesenta y cinco centímetros de fondo, siendo su construcción de cal y canto y estando situado a sesenta centímetros del límite del solar por la parte Este o sea por el lindero del solar de Don Quintín Barrameda, y a tres metros por la parte Sur del solar, o sea la calle de Milaor; mide el solar en que se esta enclavada esta finca una extensión superficial de ocho áreas y sesenta y ocho centiáreas, linda al Norte con del solar de Don Quintín Barrameda y el de la testamentaria de Don Manuel Achondo, al Sur con la Calle Milaor, al Este con el solar de Don Quintín Barrameda y al Oeste con la calle de San Vicente; adquirida por compra a Don Andrés Garchitorena; esta finca fué justipreciada en ochocientos pesos (P800.00) Filipinos y se fijó su responsabilidad en quinientos (P500.00) pesos Filipinos por capital e intereses correspondientes a esta suma, más cien pesos (P100.00)

Filipinos para pago de costas y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

C. Finca urbana, enclavada en el municipio de San José, provincia de Ambos Camarines, Islas Filipinas, consistente en un kiosko de diez metros de frente por seis de fondo, siendo su construcción de tabla y hierro galvanizado, Mide el solar de esta finca una extensión superficial de treinta y ocho áreas y noventa centiáreas, linda al Norte con el solar de la testamentaria de Don Manuel Achondo, al Sur con la calle de Milaor, al Este con la calle de San Vicente, al Oeste con el solar de Don Andrés Garchitorena, adquirida por compra a Don Andrés Garchitorena; esta finca fué justipreciada en ochocientos pesos (P800.00) filipinos y se fijó su responsabilidad en quinientos (P500.00) pesos filipinos por capital e intereses correspondientes a esta suma, más cien (P100.00) pesos filipinos para el pago de costas y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

D. Finca urbana, enclavada en la Visita de Sabang del municipio de San José, provincia de Ambos Camarines, Islas Filipinas, compuesta de un camarín de cal y canto y de una casa también de cal y canto en la planta baja y maderas en la alta ocupando en el solar una extensión superficial de doscientos noventa y nueve metros y sesenta y cinco centímetros cuadrados. Mide el solar una hectarea, veinticinco áreas y ochenta centiáreas, linda al Norte con el camino que se dirige a San José, al Sur con el Mar Pacífico, al Este con el solar de Don Andrés Garchitorena y al Oeste con el solar de la testamentaria de Don Manuel Achondo; adquirida parte por construcción y parte por compra a Don Andrés Garchitorena; esta finca fué justipreciada en quince mil pesos (P15,000) filipinos y en la relacionada escritura de 8 de Junio de 1904 se fijó su responsabilidad en la suma de diez mil pesos y cuarenta centimos (P10,000.40), moneda filipina, más setecientos Pesos (P700) filipinos para el pago de costas y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

E. Un late en Tigaon del pueblo del mismo nombre en el sitio de Taloojon de la provincia de Ambos Camarines, justipreciada en veinte mil pesos (P20,000.00) filipinos, fijandose su responsabilidad en la mencionada escritura en diez y seis mil pesos (P16,000.00) filipinos, más quinientos pesos (P500.00) para costas y gastos en caso de litigio.

794 F. Todos los lates que hay en las Visitas de Payatan, La Luz y Pinalabanan, valorados en ocho mil pesos (P8,000.00) filipinos, y en dicha escritura se fijó su responsabilidad en cinco mil pesos (P5,000.00), más quinientos pesos filipinos (P500.00), en caso de litigio.

G. Casa y solar en Tingaon, valorados en ochocientos pesos (P800.00) filipinos, fijándose su responsabilidad en la relacionada escritura en quinientos pesos (P500.00), más cien (P100.00) pesos filipinos para costas y gastos en caso de litigio.

H. Casa y almacén de hierro galvanizado en el pueblo de Sanay de la provincia de Ambos Camarines, valorados en mil (P1,000.00) pesos filipinos, y en dicha escritura de 8 Junio de 1904 se fijó

su responsabilidad en ochocientos pesos filipinos (P800.00) más cien (P100) para costas y gastos en caso de litigio.

I. Tres lates abacales en Puyo del pueblo de Goa, de la provincia de Ambos Camarines, valorados en siete mil pesos (P7,000.00) filipinos, fijándose en dicha escritura su responsabilidad en la suma de cinco mil pesos (P5,000) filipinos, más quinientos pesos para costas y gastos en caso de litigio.

J. Sementeras en San José de Lagonoy, de la provincia de Ambos Camarines, valorados en novecientos pesos (P900.00) filipinos y en dicha escritura se fijó su responsabilidad en la suma de cuatrocientos pesos (P400.00) filipinos, más cien pesos (P100.00) para pago de costas y gastos que pudieran ocasionarse al acreedor si tuviera que proceder judicialmente.

Properties Mortgaged by Liborio Tremoya.

K. Finca urbana o sea un solar situado en la calle Daquitan del barrio de Tabuco del Municipio de Nueva Cáceres, provincia de Ambos Camarines, Islas Filipinas que mide dos mil ciento quince metros cuadrados, lindante por la derecha entrando Ana Jacobo Heredera de Feliciano Jacobo, Isidoro Francisco, por la izquierda calle pública sin nombre que va a los camarines de carga y descarga de los vapores, por frente la calle de Daquitan y por la espalda Bonifacia Regalado. Dentro de cuyo solar se halla construido un edificio de materiales fuertes con prensa para abacá. Adquirido el solar por compra a Don José Gallietabeitia según escritura número setenta y cinco otorgada en veinticuatro de Septiembre de mil novecientos uno ante el Notario de Nueva Cáceres, provincia de Ambos Camarines Don Tomás Flordelisa; y el edificio por construcción propia. Dicha finca se halla inscrita en el antiguo registro de la propiedad de dicha provincia Tomo segundo, libro primero de Nueva Cáceres, folio cuarenta vuelto, finca número doce, inscripción cuarta; esta finca fué avaluada en cuarenta y cinco mil (P45,000.00) pesos filipinos, y se fijó su responsabilidad en cuarenta y cuatro mil (P44,000.00) pesos filipinos e intereses correspondientes a esta suma, mas quinientos pesos (P500.00) para costas y gastos en caso de litigio.

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XX.

That on the 30th day of January, 1907, the defendant Aldecoa & Co., b. public instrument executed before a notary public of the City of Manila, authorized the plaintiff bank to collect from certain persons and firms named in the said instrument any and all debts owing by them to the said Aldecoa & Co. and to apply all amounts so collected and received to the satisfaction pro tanto of any indebtedness of Aldecoa & Co. to the plaintiff corporation, all of which appears more particularly from a copy of the said instrument of January 30, 1907, in evidence herein as plaintiff's Exhibit "C," admitted by defendants to be correct, and which is hereby incorporated by reference into these findings.

XXI.

That by public instrument dated in Manila, February 18, 1897, the defendant Aldecoa & Co. acknowledged an indebtedness to the defendant Joaquin Aldecoa in the sum of P154,589.20, a like indebtedness to the defendant Zoilo Aldecoa, and an indebtedness in favor of the defendant Cecilia Aldecoa in the sum of P89,177.07. (See Defendants' Exhibit 2, record page 361.)

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XXII.

That under date of September 30, 1908, the defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet recovered a judgment in the Court of First Instance of Manila against the defendant Aldecoa & Co. for the payment to them of the sum of P155,127.31, as the balance due them from Aldecoa & Co. upon the indebtedness acknowledged in the instrument above referred to as defendants' Exhibit 2.

XXIII.

That on November 30, 1907, the defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet brought an action in the Court of First Instance of the City of Manila, under No. 7493, against the present plaintiff for the purpose of obtaining a judicial declaration to the effect that the contract herein referred to as plaintiff's Exhibit "D" (record Page 194), whereby Aldecoa & Co. mortgaged to the plaintiff bank shares of the Pasay Estates Co., Ltd., recovered from Alejandro S. Macleod, was null and void, and for a judgment that the said shares be sold and applied to the satisfaction of the judgment obtained by said Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet against Aldecoa & Co. in the case referred to in the next preceding paragraph of these findings.

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XXIV.

The judgment was rendered in favor of the said Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet in said case No. 7493, but said judgment, upon appeal by the Hongkong & Shanghai Banking Corporation, plaintiff herein, to the Supreme Court of the Philippine Islands, was by said court annulled and set aside by its decision dated February 26, 1912, and the mortgage of the said shares of stock to the plaintiff herein was declared to be valid.

The contention that said decision of the Supreme Court, is not res judicata as to the priority of the claim presented by cross-complainants would seem to be effectually answered by another decision of said Court in which defendants' attorneys were also of counsel, as follows:

"The law of res judicata is well settled in the United States and is laid down in a series of decisions of the Supreme Court to the effect

that as between the parties to the first judgment and their privies it operates as a bar to a second action upon the same claim, not only as to issues actually in litigation but also as to all matters which might have been litigated therein." (*Tanguinlay v. Quiros*, 10 Phil. 360, 362.)

XXV.

That in October, 1908, the defendants Joaquin and Zoilo Ibañez de Aldecoa y Palet instituted an action in this court against the present plaintiff, the Hongkong & Shanghai Banking Corporation, for the purpose of obtaining a judgment annulling the mortgages created by them upon their interests in the properties described in the instrument herein referred to as Exhibits "A" and 798 "B," upon the ground that the emancipation of the said defendants by their mother, the defendant Doña Isabel Palet, was void and of no effect, and that, therefore, they were minors incapable of creating a valid mortgage upon their real property at the time of the execution of the said instrument. The court of First Instance dismissed the complaint as — the defendant Joaquin Aldecoa upon the ground that the said defendant had ratified the mortgages in question after coming of age, but entered a judgment annulling said mortgages with respect to the defendant Zoilo Ibañez de Aldecoa y Palet. Both parties appealed from this decision and the case is now pending decision in the Supreme Court of the Philippine Islands as case No. 6889 of the Court. (See defendants' Exhibit 4, record page 410.)

XXVI.

That in September, 1908, the Court of First Instance of the City of Manila rendered a judgment in case 6088 of said court, wherein the present defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet were plaintiffs and Aldecoa & Co. and Isabel Palet defendants herein, were defendants, holding that the contract of partnership by which the firm of Aldecoa & Co. was constituted in evidence herein as plaintiff's Exhibit "H," record page 242 was void as to the defendants Joaquin, Zoilo and Cecilia Ibañez de Aldecoa y Palet. A copy of this judgment was offered in evidence in 799 this case as defendants' Exhibit 5 (record page 443), but was objected to by plaintiff upon the ground that it had not been a party to the case in which said judgment was rendered. The Court reserved its ruling at the time, but now sustains the objection of plaintiff to the admission of said judgment, to which ruling defendants except.

XXVII.

That on the 31st day of December, 1906, on which date the defendant Aldecoa & Co. went into liquidation, the amount of its indebtedness to the plaintiff corporation upon the overdraft created by the terms of the contract referred to herein as Exhibit "A" was P516,517.98 (record page 222).

XXVIII.

That neither the defendant Aldecoa & Co. nor any of the defendants herein has paid or caused to be paid to the plaintiff corporation the yearly partial payments due under the terms of the contract in evidence herein as Exhibit "A."

XXIX.

That from time to time the plaintiff bank has collected and received from provincial debtors of the defendant Aldecoa & Co., under the authority to that and conferred upon it by the terms of the instrument in evidence as plaintiff's Exhibit "G," various sums shown in the statement in evidence as plaintiff's Exhibit "Q" (record page 290), all of which sums so received have been placed to the credit of Aldecoa & Co. and notice duly given
800 the latter of the receipt and application thereof (testimony of Urquhart, page 621).

XXX.

That the plaintiff bank from time to time since the date upon which the defendant Aldecoa & Co. went into liquidation has received various sums of money from or for the account of Aldecoa & Co., ail of which have been duly placed to the credit of that firm, including the sum of P22,352.63, the amount of a credit against one Martin Achaval assigned to the bank by Aldecoa & Co. in Manila, February 8, 1907 (Exhibit "AA" record page 328), and ratified by a subsequent instrument executed in Manila March 4, 1909 (Exhibit "BB" record page 335).

XXXI.

That the defendant Aldecoa & Co. has kept an account in its books with the plaintiff corporation with respect to all transactions connected with the credit granted under the terms of the contract referred to herein as Exhibit "A." The balance to the credit of the plaintiff corporation on the 31st of December, 1911, shown on the books of the defendant Aldecoa & Co., was the sum of P416,853.46. In the course of the proceedings it appeared that an error had been committed by the Bank by liquidating the interest charged to the defendants upon their overdraft quarterly instead of half yearly, as required under the terms of Exhibit "A," whereupon the necessary compensating entries having been made to correct the said
801 error, it appears (record page 608) that the actual amount of the indebtedness of the defendant Aldecoa & Com. to the plaintiff corporation on the 15th day of February, 1912, with interest to December 31st, 1911, only was the sum of P378,212.52, and on this date is P344,924.23.

XXXII.

There is no competent evidence that the plaintiff bank has induced or attempted to induce any customer of the defendant Aldecoa & Co. to discontinue business relations with said defendant.

XXXIII.

That inasmuch as it does not appear from the evidence introduced on behalf of the intervenor, Mr. W. Urquhart that he has any legal interest in the matter in litigation between the parties plaintiff and defendants herein, or in the success of either of the parties, or an interest against both, as required by Section 121 of the Code of Civil Procedure (Cf. *R. & C. R. Co. v. Fitzgerald*, 33 Neb. 137) the court considers it unnecessary to make findings with respect to the facts alleged in the complaint in intervention.

It is accordingly considered, and decreed that plaintiff have and recover from the defendant Aldecoa & Co. in liquidation, the sum of P344,924.23, Philippine currency, with interest thereon at the rate of seven per cent. (7%) per annum, compounded semi-annually, from this date until paid, and said defendant is
802 ordered to pay said sum into Court on or before the first day of the next term hereof, and that in default of said payment the property hereinbefore described as subject to the mortgage executed to the plaintiff by said defendant, and by the defendants Doña Isabel Palet y Gabarro, Don Joaquin Ibañez de Aldecoa y Palet, and Don Zoilo Ibañez de Aldecoa y Palet, be sold to satisfy said sum, interest and costs, namely:—

All of the right, title and interest of the defendants Aldecoa & Co., in liquidation, Isabel Palet y Gabarro, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa in and to that certain real property more particularly described and referred to in the foregoing findings of fact, and more particularly in plaintiff's Exhibit "A," Provided, however, that said interest of said defendants shall respond for the satisfaction of said judgment only in the sums enumerated and set — in paragraphs XI and XII of said plaintiff's Exhibit "A," and in paragraph II of these findings, and only such portion of the proceeds of the sale of said interests as are specific shall be applied to the satisfaction of the within judgment;

All of the right, title and interest of said defendants in and to sixteen (16) shares of the capital stock of the Banco Español Filipino numbered 2356 to 2371, inclusive;

803 All of the right, title and interest of the defendants in and to four hundred fifty (450) shares of the capital stock of the Compañía Marítima, numbered 51 to 100, inclusive, and 301 to 700, inclusive;

All of the right, title and interest of Aldecoa & Co., in liquidation, Isabel Palet y Gabarro, Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet in and to that real property particularly

described in paragraphs XV and XVI of the findings of fact hereinabove set forth;

All of the right, title and interest of Aldecoa & Co., in liquidation, in and to that certain real property particularly described in paragraph XIV of said findings of fact;

All of the right, title and interest of the defendants herein in and to that certain property particularly described and referred to in paragraphs XV and XVII of the said findings of fact;

All of the right, title and interest of the said defendants in and to the real property particularly described and referred to in paragraph XVIII of the said findings of fact;

All of the right, title and interest of the said defendants in and to the real properties particularly described and referred to in paragraph XIX of the within findings of fact;

All of the right, title and interest of the defendants in and to certain properties particularly described and referred to in
804 paragraph XX of the within findings of fact;

And that said sale be made in accordance with the provisions of the Code of Civil Procedure relative to the foreclosure of mortgages;

It is further adjudged and decreed that if the proceeds arising from the said sale shall be insufficient to pay the amount hereinbefore found be due to the plaintiff with the interest, costs and expenses of sale as aforesaid, the Sheriff shall specify the amount of such deficiency and balance due the plaintiff in his return of said sale.

It is further considered and adjudged that plaintiff have and recover from the defendants, Isabel Palet y Gabarró, Alejandro Macleod, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa, jointly and severally (*mancomunadaya solidariamente*), the sum of P344,924.23, Philippine currency, with interest thereon at 7 per cent per annum, payable semiannually, from August 10, 1912, until paid; provided however, that execution hereon shall not issue against the last named defendant nor be levied upon their individual property, other than as herein expressly provided for, by way of foreclosure, until the property of the defendant Aldecoa & Co., in Liquidation shall first have been exhausted.

It is further adjudged and decreed that the defendant Aldecoa & Co., in liquidation, take nothing by its counterclaim; that the defendants Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Cecilia Ibañez de Aldecoa y Palet take nothing by
805 their cross-complaint, and that the petition of intervention filed by William Urquhart be dismissed at his costs.

Let the balance of the costs be apportioned equally among the defendants.

Manila, August 10, 1912.

By the Court:

(Sgd.)

CHARLES S. LOBINGIER, *Judge*.

Defendants Isabel Palet Viuda de Aldecoa, Joaquin, Zoilo and Cecilia Ibañez de Aldecoa filed their exceptions in Court in due time and form against the foregoing decision and together with their exceptions filed a motion for a new trial, based on the following motives, to wit:

1st. Because the evidence does not sufficiently justify the decision of the Court, the findings of facts made in said decision being openly and manifestly against the weight of the evidence.

2nd. Because said decision is contrary to Law.

806 The Court overruled said motion for a new trial and petitioners filed their exception against the order denying their motion for a new trial and giving notice at the same time of their intention to file a Bill of Exceptions, all of which was done in due form and within the time fixed by law.

Defendants through their undersigned attorneys, now file their Bill of Exceptions and ask this Court to approve and certify the same and order that the same be sent to the Honorable Supreme Court, together with all the documentary and oral evidence offered in this case for the effects that in justice be proper.

Manila, September 14, 1912.

CHICOTE AND MIRANDA,

*Attorneys for Appellants Isabel Palet, Joaquin,
Zoilo, and Cecilia Ibañez de Aldecoa.*

Received copy this 16th day of September, 1912.

HAUSSERMAN, COHN & FISHER,

p. p. CHARLES C. COHN,

Attorneys for Plaintiff.

Filed on the 16th day of September, 1912, at 3:10 p. m. (Sgd.)
J. McMicking, Clerk.

807 UNITED STATES OF AMERICA,
Philippine Islands:

No. 8519.

In the Court of First Instance of the City of Manila.

HONGKONG & SHANGHAI BANKING CORPORATION

vs.

ALDECOA & Co. et al.

Judge's Certificate to the Bill of Exceptions.

I hereby certify that the foregoing Bill of Exceptions is correct and contains all the essential parts for a clear understanding of all the errors assigned. Execution of the judgment shall not be stayed unless the appellant executed a good and sufficient bond in the sum of P— with sureties of recognized solvency to the satisfaction of the

Court, to secure the performance of the judgment appealed from in case it be affirmed in whole or in part.

Manila, November 5, 1912.

CHARLES S. LOBINGIER, *Judge*.

PHILIPPINE ISLANDS,

Manila, ss:

The undersigned hereby certifies that the foregoing Bill of Exceptions, composed of 103 pages, is the original Bill of Exceptions presented by the appellant and approved by this Court.

In faith whereof I sign these presents, in Manila, this 14th day of November, 1912.

J. McMICKING, *Clerk*.

Supreme Court of the Philippines. Clerk's Office. Filed Sep. 16, 1912, 3:10 p. m. V. Albert, Clerk.

Be it known that in this — day of — 1912, and by registered mail three copies of this printed Bill of Exceptions have been sent to each one of the parties of this case.

V. ALBERT,

Clerk Supreme Court, P. I.,

By ———, *Deputy Clerk.*

809 Proceedings in the Supreme Court of the Philippine Islands.

No. 8519.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff,
Appellee and Appellant,

against

ALDECOA AND COMPANY, et al., Defendant-, Appellant- and Appellee-

On November 16, 1912, the case was duly transmitted to the Supreme Court and filed therein, both parties being appellant each having presented a separate bill of exceptions.

Thereafter and on the 22nd day of October, 1913, defendants Joaquin and Zoilo Ibañez de Aldecoa filed a brief in the supreme court which contains the following assignment of errors:

I. The Court erred in not sustaining the plea of *lis pendens* with respect to the validity of the mortgages claimed by plaintiff which plea was set up as special defense by the defendants Joaquin and Zoilo Ibañez de Aldecoa, and in taking jurisdiction of the case, and in deciding therein a matter already submitted for adjudication and not yet finally disposed of.

II. The court erred in not sustaining the plea of *res adjudicata* set up as special defense by these defendants with respect to the contention of plaintiff that these defendants are industrial and general partners of the firm of Aldecoa and Company.

810 III. The court erred in holding that the defendants Joaquin and Zoilo Ibañez de Aldecoa were general partners (*socios colectivos*) and in rendering judgment against them subsidiarily for the payment of the amount claimed in the complaint.

On the 29 day of August, Isabel Palet filed a brief in the supreme court of the Philippine Islands which contains the following assignment of errors:

I. That the lower court failed to hold the obligation of Doña Isabel Palet as surety has been extinguished.

II. That the lower court erred in refusing to order for the benefit of this appellant that the property of Aldecoa and Company should be exhausted before the plaintiff firm should be entitled to have resort to the property of this defendant and appellant for the satisfaction of its judgment.

On the 22nd day of October, 1913, Defendant Cecilia Ibañez de Aldecoa filed also a brief in the supreme court of the Philippine Islands wherein the following assignment of errors is made:

I. The court erred in not sustaining the plea of *res adjudicata* in the special answer filed by this defendant against the claim of plaintiff that this defendant is an industrial partner of Aldecoa and Company.

II. The court erred in holding that this defendant Cecilia Ibañez de Aldecoa was a general partner (*socia colectiva*) of Aldecoa and Company and in rendering judgment against the same subsidiarily for the payment of the amount claimed by the plaintiff.

811 Thereafter, and on the 14 day of January, 1914 the case was argued and submitted to the supreme court both parties having been represented by their respective attorneys.

Thereafter, and on the 23rd day of March, 1915, the supreme court of the Philippine Islands rendered its decision which was published in the official Gazette on the 28 day of April, 1915, copy of which is as follows:

812 (R. G. No. 8437—March 23, 1915.)

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff,
and Appellee,

vs.

ALDECOA AND COMPANY, in Liquidation; JOAQUIN IBANEZ DE ALDECOA y Palet, Zoilo Ibanez de Aldecoa y Palet, Cecilia Ibanez de Aldecoa y Palet, and Isabel Palet de Gabarro, Defendants and Appellants; William Urquhart, Intervenor and Appellant.

Syllabus.

Partnerships "En Comandita," Industrial Partner, Liability for Debts of Firm.—Industrial partners of a partnership *en comandita* are liable subsidiarily for the debts of the firm with all their property, both real and personal, articles of the contract of partnership to the contrary notwithstanding.

Guardianship, Parental Authority, Encumbrance of Real property. Child as Industrial Partner of Partnership "En Comandita."—Parent exercising the parental authority in accordance with the provisions of the Civil Code is forbidden to encumber the real property of a minor child without approval of the court. This prohibition includes not only specific liens, such as mortgages, easements, etc., but indirect encumbrances by which the child's real property becomes subject to execution of the happening of a contingent event. Making the child an industrial partner of a mercantile partnership en comandita creates an encumbrance of the latter character and is therefore prohibited.

Id., Id., Id., Id., Ratification by Emancipated Child.—Conceding that such a contract may be ratified by the child after it has been emancipated by the parent's concession, it still creates an encumbrance upon the child's real property, and therefore, requires the express consent of the parent.

813 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

General Registry No. 8437.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff
and Appellee,

versus

ALDECOA AND COMPANY, in Liquidation; JOAQUIN IBAÑEZ DE ALDECOA y Palet, Zoilo Ibañez de Aldecoa y Palet, Cecilia Ibañez de Aldecoa y Palet, and Isabel Palet de Gabarro, Defendants and Appellants; William Urquhart, Intervener and Appellant.

Submitted: January 14, 1914; Decision Rendered: March 23, 1915.

Decision.

TRENT, J.:

In the Hongkong and Shanghai Banking Corporation vs. Aldecoa and Company et al., R. G. No. 8437, just decided, we said that the correctness of the judgment declaring that the defendants, Joaquín, Zoilo, and Cecilia Ibañez de Aldecoa, are subsidiarily liable to the bank as industrial partners of Aldecoa and Company for the debts of the latter, would now be determined in a separate opinion.

814 The facts are these: Joaquín, Zoilo, and Cecilia Ibañez de Aldecoa were born in the Philippine Islands, being the legitimate children of Zoilo Ibañez de Aldecoa and Isabel Palet. Both parents were natives of Spain, but domiciled in Manila, where the father died in 1895. At the time of his death the father was a member and managing director of an ordinary general mercantile partnership known as Aldecoa and Company. In December, 1896,

Isabel Palet, for herself and as the parent of her above named three children exercising the *patria potestad*, entered into a new contract with various persons whereby the property and good will, together, with the liabilities of the firm of which her husband was a partner, were taken over. The new firm was also an ordinary general mercantile partnership and likewise denominated Aldecoa and Company. Although having the same name, the new firm was entirely distinct from the old one and was, in fact, a new enterprise. The widow entered into the new partnership as a capitalistic partner and caused her three children to appear in the articles of partnership as industrial partners. At the time of the execution of this new contract Joaquin was twelve years of age, Zoilo eleven, and Cecilia nine.

Clauses 9 and 12 of the new contract of partnership read:
 815 9. The industrial partners shall bear in proportion to the shares the losses which may result to the partnership from bad business, but only from the reserve fund which shall be established, as set forth in the 12th clause, and if the loss suffered shall exhaust said fund, the balance shall fall exclusively upon the partners furnishing the capital.

12. The industrial partner shall likewise contribute 50 per cent of his net profits to the formation of said reserve fund, but may freely dispose of the other 50 per cent.

The question is presented, could the mother of the three children legally bind them as industrial partners of the firm of Aldecoa and Company, under the above facts? If so, are they liable jointly and severally with all their property, both real and personal, for the debts of the firm? That all industrial partners of an ordinary general mercantile partnership are liable with all their property, both personal and real, for all the debts of the firm owing to third parties precisely as a capitalist partner, has long since been definitely settled in this jurisdiction, notwithstanding provisions to the contrary in the articles of agreement. (*Compañía Marítima vs. Muñoz*, 9 Phil. Rep., 326.)

There are various provisions of law, in force in 1896, which
 816 must be considered in determining whether or not the mother had the power to make her children industrial partners of the new firm of Aldecoa and Company.

Article 5 of the Code of Commerce reads:

Persons under twenty-one years of age and incapacitated persons may continue through their guardians; the commerce which their parents or persons from whom the right is derived may have been engaged in. If the guardians do not have legal capacity to trade, or have some incompatibility, they shall be under the obligation to appoint one or more factors who possess the legal qualifications, and who shall take their places in the trade.

As the firm of which it is claimed the children are industrial partners was not a continuation of the firm of which their deceased father was a member, but was a new partnership operating under its own articles of agreement, it is clear that article 5, *supra*, does not sustain the mother's power to bind her children as industrial partners of the new firm.

Article 4 of the Code of Commerce reads:

The persons having the following conditions shall have legal capacity to customarily engage in commerce:

- 817 1. Those who have reached the age of twenty-one years.
 2. Those who are not subject to the authority of a father or mother nor to marital authority.
 3. Those who have the free disposition of their property.

The appellant children had not a single one of these qualifications in 1896 when the mother attempted to enter them as industrial partners of the firm of Aldecoa and Company.

It is claimed that the power of the mother to bind her children as industrial partners is within her parental authority as defined by the Civil Code. Articles 159 to 166 which compose chapter 3 of the Civil Code, entitled "Effect of Parental Authority with Regard to the Property of the Children," define the extent of the parental authority over the property of minor children. Article 159 provides that the father, or, in his absence, the mother, is the legal administrator of the property of the children who are under their authority. Article 160 gives to such parent the administration and usufruct of property acquired by the child by its work or industry or for any good consideration. We take it that all the property possessed by the children at the time the contract of partnership was entered
 818 into in 1896 had been acquired by them either by their work or industry or for good consideration. The children were at that time under the authority of their mother.

Article 164 reads:

The father, or the mother in a proper case, cannot alienate the real property of the child, the usufruct or administration of which belongs to them, nor encumber the same, except for sufficient reasons of utility or necessity, and after authorization from the judge of the domicile, upon hearing by the department of public prosecution, excepting the provisions which, with regard to the effects of transfers, the mortgage law establishes.

The mother did not secure judicial approval to enter into the contract of partnership on behalf of her children. Does membership in an ordinary general mercantile partnership alienate or encumber the real property of an industrial partner? Clearly, a partner alienates what he contributes to the firm as capital by transferring its ownership to the firm. But this, in the case of an industrial partner, is nothing. An industrial partner does not alienate any portion of his property by becoming a member of such a firm. Therefore, the mother did not violate this prohibition of article 164 in at-
 819 tempting to make her children industrial partners. But the article in question also prohibited her from encumbering their real property. This undoubtedly prohibits formal encumbrances such as mortgages, voluntary easements, usufructuary rights, and others, which create specific liens upon specific real property. It has been held to prohibit the creation of real rights, and especially registerable leases in favor of third persons. (Res. Aug. 30, 1893.) The same word is used in article 317 of the Civil Code in placing restrictions upon the capacity of a child emancipated by the concession of

the parent to deal with his own property. In commenting on this latter article, Manresa asks the question, "To what encumbrances does the code refer in speaking of emancipated children," and answers it as follows:

The prohibition against encumbering real property is so explicit * * * that we consider it unnecessary to enumerate what are the incumbrances to which the law refers. All that signifies a limitation upon property, such as the creation, modification, or extinction of the right of usufruct, use, habitation, emphyteusis, mortgages, annuities, easements, pensions affecting real property, bonds, etc., is, in an express manner, prohibited to emancipated children without the express consent of the persons who are mentioned in the said article 317. (Vol. 2, p. 689.)

In commenting upon the same article, Sanchez Roman says practically the same thing. (Vol. 5, p. 1179.) Neither of these commentators refers to the right of an emancipated child to enter into a contract of partnership without the parent's consent. The question, in so far as we have been able to ascertain, does not appear to have ever been discussed, either by the courts or the commentators. It is significant, however, that a contract of surety is placed by both the above mentioned commentators among the prohibited contracts. The encumbrance placed upon the real property of a surety is precisely the same as the encumbrance placed upon the real property of an industrial partner. That is, prior to judgment on the principal obligation or judgment against the partnership, the property is not specifically liable, and the creditor has no preferred lien thereon or right thereto by reason of the bond or partnership contract, as the case may be. After judgment, the property of the surety or of the industrial partner, both real and personal, is subsidiarily subject to execution. The evident purpose of both article 164, prohibiting the parent from encumbering the real property of his child without judicial approval, and of article 317, placing the same prohibition upon the emancipated child in the absence of the parent's approval, is the same. It is desired that the child's real property shall not be frittered away by hasty and ill-advised contracts entered into by the one having the administration thereof. Both articles would fail of their purpose if the parent or the child, as the case might be, could do indirectly what could not be done directly. In other words, there would be little purpose in prohibiting a formal encumbrance by means of a mortgage, for instance, when a subsidiary liability by means of a bond or membership in a partnership could as effectually deprive the child of its real property. The mother cannot be permitted to do indirectly that which she cannot do directly. But it is said that the prohibition of article 164 extends to real property only and that, therefore, the children are subsidiarily liable as industrial partners to the extent of their personal property. This proposition rests upon the theory that the mother could have freely disposed of the child's personal property in 1896 and that the only recourse open to them would have been an action against their mother for the value of such property. If this theory be true, the result would not be changed

for the reason that the children were either industrial partners or they were not. If they were, they are liable to the extent 822 of both their real and personal property for the debts of the firm. If they were not, they are in no way liable. There can be only two kinds or classes of partners in a firm of this kind, capitalist and industrial. Both are personally liable to third persons for the debts of such a firm. To say that the children are industrial partners, but liable only to the extent of their personal property, would be to place them in a different class of partners. As the mother did not secure judicial approval, the contract wherein she attempted to make her children industrial partners, with all the consequences flowing therefrom, was, therefore, defective and that act of itself in no way made the children liable for the debts of the new firm.

The question remains, did any of the children validly ratify the contract after acquiring capacity to do so? Cecilia was never emancipated and there is no evidence indicating that she has ever ratified the contract by word or deed. She is, therefore, completely exonerated from liability for the debts of Aldecoa and Company.

The other two children, Joaquin and Zoilo, were emancipated by their mother after they had reached the age of eighteen and prior to seeking annulment of the contract of partnership had participated 823 by vote and otherwise in the management of the firm, as is evidenced by Exhibits W, Y, and Z. These various acts sufficiently show a ratification of the partnership contract and would have the effect of making the two children industrial partners if they had been of age at that time. Ratification is in the nature of a contract. It is the adoption of, and assent to be bound by, the act of another. (Words and Phrases, vol. 7, p. 5930.) From the effect of emancipation it cannot be doubted that the two children had capacity, with their mother's consent, to enter into a contract of partnership, and, by so doing, make themselves industrial partners, thereby encumbering their property. Conceding that the children under these circumstances could enter into such a contract with their mother, her express consent to the ratification of the contract by the two children does not appear of record. The result flowing from the ratification being the encumbrance of their property, their mother's express consent was necessary.

For the foregoing reasons the judgment appealed from in so far as it holds the three children liable as industrial partners, is reversed, without costs in so far as this branch of the case is concerned.

Arellano, C. J., Torres, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

Johnson, J., dissents.

824

March 23, 1915.

No. 8437.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and
Appellee,

vs.

ALDECOA & COMPANY, in Liquidation, JOAQUIN IBAÑEZ DE ALDECOA
y Palet, Zoilo Ibañez de Aldecoa y Palet, Cecilia Ibañez de Alde-
coa y Palet, and Isabel Palet de Gabarro, Defendants and Appel-
lants; William Urquhart, Intervener and Appellant.

Syllabus.

Mortgages; joinder of parties defendant.—A plaintiff may make parties defendant in one action all debtors bound to him in solidum and request the foreclosure of mortgages executed by the latter as security for their debts upon real property situate within the jurisdiction of the court.

Principal and surety; failure to make payments when due.—The fact that the principal debtor failed to meet the partial payments when due and the fact that the creditor did not immediately bring an action to enforce the obligation does not constitute an extension or modification of the principal obligation so as to relieve the surety.

Partnership; liquidators not receivers.—Liquidators of partnerships appointed in accordance with law by the members of the firm are not receivers within the meaning of that term as used in the Code of Civil Procedure.

Mortgages not personal property.—Mortgages on real property are not personal property.

Abatement and revival; another action pending.—The principle upon which a plea of another action pending is sustained is that the later action is deemed unnecessary and vexatious.

Id.; Id.; Requirements to sustain Plea.—There must be the same parties, or at least such as represent the same interests. There must be the same rights asserted and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties.

Id.; Id.; Id.; Test of identity of subject matters.—A plea of the pendency of a prior action is not available unless the prior

action is of such a character that, had a judgment been rendered therein on the merits, such a judgment would be conclusive between the parties and could be pleaded in bar of the second action. The rule is applicable, between the same parties, only when the judgment to be rendered in the action first instituted will be such that, regardless of what party is successful, it will amount to *res adjudicata* against the second action.

Id.; *Id.*; Pending action to annul mortgage not a bar to an action to foreclose.—A pending action to annul a mortgage is not a bar to an action for foreclosure of the same mortgage, for the reason that, although the parties are or may be the same, the rights asserted and the relief prayed for in the two actions are entirely dissimilar.

826 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

General Registry No. 8437.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff
and Appellee,

versus

ALDECOA AND COMPANY, in Liquidation, JOAQUIN IBAÑEZ DE ALDECOA y Palet, Zoilo Ibañez de Aldecoa y Palet, Cecilia Ibañez de Aldecoa y Palet, and Isabel Palet de Gabarro, Defendants and Appellants; William Urquhart, Intervener and Appellant.

Submitted: January 14, 1914; Decision Rendered: March 23, 1915.

Decision.

TRENT, J.:

This action was brought on January 31, 1911, by the plaintiff bank against the above-named defendants for the purpose of recovering from the principal defendant, Aldecoa and Company, an amount due from the latter as the balance to its debit in an account current with the plaintiff, and to enforce the subsidiary liability of the other defendants for the payment of this indebtedness, as partners of Aldecoa and Company, and to foreclose certain mortgages executed by the defendants to secure the indebtedness sued upon.

827 Judgment was entered on the 10th of August, 1912, in favor of the plaintiff and against the defendants for the sum of P344,924.23, together with interest thereon at the rate of 7 per cent per annum from the date of the judgment until paid, and for costs, and for the foreclosure of the mortgages. The court decreed that in the event of there being a deficiency, after the foreclosure of the mortgages, the plaintiff must resort to and exhaust the property of the principal defendant before taking out execution against the

individual defendants held to be liable in solidum with the principal defendant, but subsidiarily. Judgment was also entered denying the relief sought by the intervener. All of the defendants and the intervener have appealed.

The defendants, Joaquin Ibañez de Aldecoa Zoilo Ibañez de Aldecoa and Cecilia Ibañez de Aldecoa, were born in the Philippine Islands on March 27, 1884, July 4, 1885, and —, 1887, respectively, the legitimate children of Zoilo Ibañez de Aldecoa and the defendant, Isabel Palet. Both parents were natives of Spain. The father's domicile was in Manila, and he died here on October 4, 1895. The widow, still retaining her Manila domicile, left the Philippine Islands and went to Spain in 1897 because of her health, and did not return

until the latter part of 1902. The firm of Aldecoa and Company, of which Zoilo Ibañez de Aldecoa, deceased, had been a member and managing director, was reorganized in December, 1896, and the widow became one of the general or "capitalistic" partners of the firm. The three children above mentioned, appear in the articles of agreement as industrial partners.

On July 31, 1903, Isabel Palet, the widowed mother of Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, who were then over the age of 18 years, went before a notary public and executed two instruments (Exhibits T and U), wherein and whereby she emancipated her two sons, with their consent and acceptance. No guardian of the person or property of these two sons had ever been applied for or appointed under or by virtue of the provisions of the Code of Civil Procedure since the promulgation of that Code in 1901. After the execution of exhibits T and U, both Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa participated in the management of Aldecoa and Company as partners by being present and voting at meetings of the partners of the company upon matters connected with its affairs.

On the 23rd day of February, 1906, the defendant firm of Aldecoa and Company obtained from the bank a credit in account current up to the sum of P450,000 upon the terms and conditions set forth in the instrument executed on that date, Exhibit A. Later it was agreed that the defendants, Isabel Palet and her two sons, Joaquin and Zoilo, should mortgage, in addition to certain securities of Aldecoa and Company. So, on March 23, 1906, the mortgage, Exhibit B, was executed, wherein certain corrections in the description of some of the real property mortgaged to the Bank by Exhibit A were made and the amount for which each of the mortgaged properties should be liable was set forth. These two mortgages, Exhibits A and B, were duly recorded in the registry of property of the city of Manila on March 23, 1906.

On the 31st day of December, 1906, the firm of Aldecoa and Company went into liquidation on account of the expiration of the term for which it had been organized, and the intervener, Urquhart, was duly elected by the parties as liquidator, and by resolution dated January 24, 1907, he was granted the authority expressed in that resolution, Exhibit G.

On June 30, 1907, Aldecoa and Company in liquidation, for the purposes of certain litigation about to be commenced in its behalf, required an injunction bond in the sum of P50,000, which was furnished by the bank upon the condition that any liability incurred on the part of the bank upon this injunction bond would be covered by the mortgage of February 23, 1906. An agreement to this effect was executed by Aldecoa and Company in liquidation, by Isabel Palet, by Joaquín Ibañez de Aldecoa, who had then attained his full majority, and by Zoilo Ibañez de Aldecoa, who was not yet twenty-three years of age. In 1908 Joaquín Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa commenced an action against their mother, Isabel Palet, and Aldecoa and Company, in which the bank was not a party, and in September of that year procured a judgment of the Court of First Instance annulling the articles of copartnership of Aldecoa and Company, in so far as they were concerned, and decreeing that they were creditor- and not partners of that firm.

The real property of the defendant, Isabel Palet, mortgaged to the plaintiff corporation by the instrument of March 23, 1906, (Exhibit B), was, at the instance of the defendant, registered under the provisions of the Land Registration Act, subject to the mortgage thereon, in favor of the plaintiff by decree of the land court, dated March 8, 1907.

On the 6th of November, 1906, the defendants, Isabel Palet and her three children, Joaquín Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa, applied to the Land Court for the registration of their title to the real property described in paragraph 4 of the instrument of March 23, 1906, (Exhibit B), in which application they stated that the undivided three-fourths of said properties belonging to the defendants, Isabel Palet, Joaquín Ibañez de Aldecoa, and Zoilo Ibañez de Aldecoa, were subject to the mortgage in favor of the plaintiff to secure the sum of P203,985.97 under the terms of the instrument dated March 22, 1906. Pursuant to this petition the Court of Land Registration, by decree dated September 8, 1907, registered the title of the applicants to that property subject, with respect to the undivided three-fourths interest therein pertaining to the defendants, Isabel Palet and her two sons, Joaquín, and Zoilo, to the mortgage in favor of the plaintiff to secure the sum of P203,985.97.

On December 22, 1906, Aldecoa and Company by a public instrument executed before a notary Public, as additional security for the performance of the obligations in favor of the plaintiff under the terms of the contracts, Exhibits A and B, mortgaged to the bank the right of mortgage pertaining to Aldecoa and Company upon certain real property in the Province of Albay, mortgaged to said company by one Zubeldia to secure an indebtedness to that firm. Subsequent to the execution of this instrument, Zubeldia caused his title to the mortgaged property to be registered under the provisions of the Land Registration Act, subject to a mortgage of Aldecoa and Company to secure the sum of P103,943.84 and

to the mortgage of the mortgage right of Aldecoa and Company to the plaintiff.

As the result of the litigation between Aldecoa and Company and A. S. Macleod, wherein the injunction bond of P50,000 was made by the bank in the manner and for the purpose above set forth, Aldecoa and Company became the owner, through a compromise agreement executed in Manila on the 14th of August, 1907, of the shares of the Pasay Estate Company Limited (referred to in the contract of March 13, 1907, Exhibit V), and on the 30th day of August of that year Urquhart, as liquidator, under the authority vested in him as such, and in compliance with the terms of the contract of June 13, 1907, mortgaged to the plaintiff, by way of additional security for the performance of the obligations set forth in Exhibits A and B, the 312 shares of the Pasay Estate Company, Limited, acquired by Aldecoa and Company.

On the 31st day of March, 1907, Aldecoa and Company mortgaged, as additional security for the performance of those obligations, to the plaintiff the right of mortgage, pertaining to the firm 833 of Aldecoa and Company, upon certain real estate in the Province of Ambos Camarines, mortgaged to Aldecoa and Company by one Andres Garchitorena to secure a balance of indebtedness to that firm of the sum of P20,280.19. The mortgage thus created in favor of the bank was duly recorded in the registry of deeds of that province. On the 31st day of March, 1907, Aldecoa and Company mortgaged as further additional security for the performance of the obligations set forth in Exhibits A and B, the right of mortgage pertaining to the firm of Aldecoa and Company upon other real property in the same province, mortgaged by the firm of Tremoya Hermanos and Liborio Tremoya, to secure the indebtedness of that firm to the firm of Aldecoa and Company of P43,117.40 and the personal debt of the latter of P75,463.54. The mortgage thus created in favor of the bank was filed for record with the register of deeds of that province.

On the 30th day of January, 1907, Aldecoa and Company duly authorized the bank to collect from certain persons and firms, named in the instrument granting this authority, any and all debts owing by them to Aldecoa and Company and to apply all amounts so collected to the satisfaction, pro tanto of any indebtedness of Aldecoa and Company to the bank.

834 By a public instrument dated February 18, 1907, Aldecoa and Company, acknowledged an indebtedness to Joaquin Ibañez de Aldecoa in the sum of P154,589.20, a like indebtedness to Zoilo Ibañez de Aldecoa, and an indebtedness in favor of Cecilia Ibañez de Aldecoa in the sum of P89,177.07. On September 30, 1908, Joaquin, Zoilo, and Cecilia, recovered a judgment in the Court of First Instance of Manila for the payment to them of the sum of P155,127.31, as balance due them upon the indebtedness acknowledged in the public instrument dated February 18, 1907.

On November 30, 1907, Joaquin, Zoilo, and Cecilia instituted an action in the Court of First Instance of the city of Manila against the plaintiff bank for the purpose of obtaining a judicial declaration

to the effect that the contract whereby Aldecoa and Company mortgaged to the bank shares of the Pasay Estate Company, recovered from Alejandro S. Macleod, was null and void, and for a judgment that these shares be sold and applied to the satisfaction of their judgment obtained on September 30, 1908. Judgment was rendered by the lower court in favor of the plaintiffs in that action in accordance with their prayer, but upon appeal this court reversed that judgment and declared that the mortgage of the shares of stock in the Pasay Estate Company to the bank was valid.

835 In October, 1908, Joaquin and Zoilo Ibañez de Aldecoa instituted an action against the plaintiff bank for the purpose of obtaining a judgment annulling the mortgages created by them upon their interest in the properties described in Exhibits A and B, upon the ground that the emancipation by their mother was void and of no effect, and that, therefore, they were minors incapable of creating a valid mortgage upon their real property. The Court of First Instance dismissed the complaint as to Joaquin upon the ground that he had ratified those mortgages after becoming of age, but entered a judgment annulling said mortgages with respect to Zoilo. Both parties appealed from this decision and the case was given R. G. No. 6889 in the Supreme Court.

On the 31st day of December, 1906, on which date the defendant, Aldecoa and Company, went into liquidation, the amount of indebtedness to the bank upon the overdraft created by the terms of the contract, Exhibit A, was P516,517.98. Neither the defendant, Aldecoa and Company, nor any of the defendants herein, have paid or caused to be paid to the bank the yearly partial payments due under the terms of the contract, Exhibit A. But from time to time the bank has collected and received from provincial debtors of Aldecoa and Company the various sums shown in Exhibit 2, all of which sums so received have been placed to the credit of Aldecoa and Company and notice duly given. Also, the bank, from time to time, since the date upon which Aldecoa and Company went into liquidation, has received various other sums from, or for the account of, Aldecoa and Company, all of which have been duly placed to the credit of that firm, including the sum of P22,552.63, the amount of the credit against one Achaval, assigned to the bank by Aldecoa and Company. The balance to the credit of the bank on the 31st day of December 1911, as shown on the books of Aldecoa and Company, was for the sum of P416,853.46. It appeared that an error had been committed by the bank in liquidating the interest charged to Aldecoa and Company, and this error was corrected so that the actual amount of the indebtedness of Aldecoa and Company to the plaintiff on the 15th of February, 1912, with interest to December 31, 1911, was the sum of P378,212.52, and on August 10, 1912, the date of the judgment, the amount was P344,924.23.

The trial court found that there was no competent evidence that the bank induced, or attempted to induce, any customer of Aldecoa and Company to discontinue business relations with that company. The court further found that Mr. Urquhart had failed to show that he had any legal interest in the matter in litigation between

837 plaintiff and defendants, or in the success of either of the parties, or an interest against both, as required by section 121 of the Code of Civil Procedure. No further findings, with respect to the facts alleged in the complaint of the intervenor, were made.

Aldecoa and Company insist that the court erred:

1. In overruling the defendant's demurrer based upon the alleged ambiguity and vagueness of the complaint.

2. In ruling that there was no competent evidence that the plaintiff had induced Aldecoa and Company's provincial debtors to cease making consignments to that firm.

3. In rendering a judgment in a special proceeding for the foreclosure of a mortgage, Aldecoa and Company not having mortgaged any real estate of any kind within the jurisdiction of the trial court, and the obligation of the persons who had signed the contract of suretyship in favor of the bank having been extinguished by operation of law.

The argument on behalf of defendant in support of its first assignment of error is based upon the claim that inasmuch as it appears from the complaint that Aldecoa and Company authorized the plaintiff bank, by the instrument Exhibit G, to make collections

838 on behalf of this defendant, and that the complaint failed to specify the amount obtained by the bank in the exercise of the authority conferred upon it, the complaint was thereby rendered vague and indefinite. Upon this point it is sufficient to say that the complaint alleges that a certain specific amount was due from the defendant firm as a balance of its indebtedness to the plaintiff, and this necessarily implies that there were no credits in favor of the defendant firm of any kind whatsoever which had not already been deducted from the original obligation.

With respect to the contention set forth in the second assignment of error to the effect that the bank has prejudiced Aldecoa and Company by having induced customers of the latter to cease their commercial relations with this defendant, the ruling of the court that there is no evidence to show that there was any such inducement is fully supported by the record. It may be possible that some of Aldecoa and Company's customers ceased doing business with that firm after it went into liquidation. This is the ordinary effect of a commercial firm going into liquidation. This is especially true in the case under consideration, for the reason that it was a well known fact

that Aldecoa and Company was insolvent. It is hardly probable that the bank, with so large a claim against Aldecoa and

839 Company and with unsatisfactory security for the payment of its claim, would have taken any action whatever which might have had the effect of diminishing Aldecoa and Company's ability to discharge their claim. The contention that the customers of Aldecoa and Company included in the list of debtors ceased to make consignments to the firm because they had been advised by the bank that Aldecoa and Company had authorized the bank to collect these credits, if true would not justify a holding that the bank was thereby liable for any damages which had been suffered by the defendant firm by reason of such customers ceasing to do business, for the

reason that the bank had been expressly authorized by the defendant firm to collect these credits from the defendant's provincial customers and apply the amounts so collected to the partial discharge of the indebtedness of the defendant to the bank. Furthermore, the bank was expressly empowered to take any steps which might be necessary, judicially or extrajudicially, for the collection of these credits. The real reason which caused the defendant's provincial customers to cease making shipments was due to the fact that the defendant, being out of funds, could not give its customers any further credit. It is therefore clear that the bank, having exercised the authority conferred upon it by the company in a legal manner, is not responsible for any damages which might have resulted from the failure of the defendant's provincial customers to continue doing business with that firm.

In the third assignment of errors two propositions are insisted upon: (1) That in these foreclosure proceedings the court was without jurisdiction to render judgment against Aldecoa and Company for the reason that that firm had mortgaged no real property within the city of Manila to the plaintiff, and (2) that the mortgages given by this defendant have been extinguished by reason of the fact that the bank extended the time within which the defendant's provincial debtors might make their payments.

We understand that the bank is not seeking to foreclose its mortgages upon the mortgages which the defendant firm holds upon certain real properties in the Province of Albay and Ambos Camarines and to sell these properties at public auction in these proceedings. Nor do we understand that the judgment of the trial court directs that this be done. Before that property can be sold the original mortgagors will have to be made parties. The bank is not trying to foreclose, in this action, any mortgages on real property executed by Aldecoa and Company. It is true that the bank sought and obtained a money judgment against the other defendants. If two or more persons are in solidum the debtors of a third person, and one or more of such debtors constitute mortgages upon their real property situate in the jurisdiction of the court, the creditor, in case his obligation is not paid at maturity, may include all of the solidary debtors in the same suit and secure a joint and several judgment against them, as well as judgments of foreclosure upon the respective mortgages.

The contention that the extensions granted to Aldecoa and Company's debtors, with the consent and authority of that firm itself, has resulted in extinguishment of the mortgages created by Aldecoa and Company, or of the mortgages created by partners of that company to secure its liabilities to the bank, is not tenable. The record shows that all the sureties were represented by Urquhart, the person elected by them as liquidator of the firm, when he agreed with the bank upon the extensions granted to those debtors. The authority to grant these extensions was conferred upon the bank by the liquidator, and he was given authority by all the sureties to authorize the bank to proceed in this manner.

With respect to the contention that the bank should be required to render an account of collections made under authority of Exhibit G, it is sufficient to say that the bank has properly accounted for all amounts collected from the defendant's debtors, and has applied all such amounts to the partial liquidation of the defendant's debt due to the bank. It is true that the sum for which judgment was rendered against Aldecoa and Company is less than the amount originally demanded in the complaint, but this difference is due to the fact that certain amounts which had been collected from Aldecoa and Company's provincial debtors by the bank were credited to the latter between the date on which the complaint was filed and the date when the case came on for trial. And the further fact that it was necessary to correct an entry concerning one of the claims inasmuch as it appears that this claim had been assigned to the bank absolutely, and not merely for the purposes of collection, as the bookkeeper of the bank supposed, the result being that instead of crediting Aldecoa and Company with the full face value of this claim, the bookkeeper had merely credited from time to time the amount collected from this debtor. We, therefore, find no error prejudicial to the rights of this defendant.

Doña Isabel Palet makes the following assignment of errors:

1. That the court erred in failing to hold that her obligation as surety had been extinguished in accordance with the provisions of article 1851 of the Civil Code.

2. That the court erred in refusing to order for the benefit of this appellant that the property of Aldecoa and Company should be exhausted before the plaintiff firm should be entitled to have recourse to the property of this defendant and appellant for the satisfaction of its judgment.

This appellant does not contend that she is not personally liable in solidum with Aldecoa and Company for the liability of the latter firm to the plaintiff in the event that the appeal taken by Aldecoa and Company should be unsuccessful. We have just held that the judgment appealed from by Aldecoa and Company should be affirmed. But Doña Isabel Palet does contend that her liability as a partner for the obligations of Aldecoa and Company, although solidary, is subsidiary, and that she is entitled to insist that the property of Aldecoa and Company be first applied in its entirety to the satisfaction of the firm's obligations before the bank shall proceed against her in the execution of its judgment.

The trial court directed that the mortgaged properties, including the properties mortgaged by this defendant, should be sold under foreclosure in the event that Aldecoa and Company should fail to pay into court the amount of the judgment within the time designated for that purpose. The court recognized the sub-

844 subsidiary character of the personal liability of Doña Isabel Palet as a member of the firm of Aldecoa and Company and decreed that as to any deficiency which might result after the sale of the mortgaged properties, execution should not issue against the properties of Doña Isabel Palet until all the property of Alde-

coa and Company shall have been exhausted. The properties mortgaged by Doña Isabel Palet were so mortgaged not merely as security for the performance of her own solidary subsidiary obligation as a partner bound for all the debts of Aldecoa and Company, but for the purpose of securing the direct obligation of the firm itself to the bank. We are, therefore, of the opinion that the trial court committed no error upon this point.

It is urged on behalf of Doña Isabel Palet that the mortgages executed by her upon her individual property have been canceled. The ground for this contention is that Aldecoa and Company undertook by the contract of February 23, 1906, to discharge its liability to the plaintiff bank at the rate of not less than P50,000 per annum, and that therefore it was the duty of the bank to sue Aldecoa and Company as soon as that firm failed to pay at maturity any one of the partial payments which it had promised to make,

and to apply the proceeds from the sale of the property of 845 Aldecoa and Company to the satisfaction of this indebtedness, and that the fact that the bank failed to do so is equivalent to an extension of the term of the principal debtor, and that the effect of this extension has been to extinguish the obligation of this defendant as a surety of Aldecoa and Company. It is also contended that the bank expressly extended the term within which Aldecoa and Company was to satisfy its obligation by allowing Aldecoa and Company to furnish additional security. Doña Isabel Palet alleges that all these acts were done without her knowledge or consent.

The extension of the term which, in accordance with the provisions of article 1851 of the Civil Code produces the extinction of the liability of the surety must of necessity be based on some new agreement between the creditor and principal debtor, by virtue of which the creditor deprives himself of his right to immediately bring an action for the enforcement of his claim. The mere failure to bring an action upon a credit, as soon as the same or any part of it matures, does not constitute an extension of the term of the obligation.

Doña Isabel Palet is a personal debtor jointly and severally with Aldecoa and Company of the whole indebtedness of the 846 latter firm to the bank, and not a mere surety for the performance of the obligations of Aldecoa and Company without any solidary liability. It is true that certain additional deeds of mortgage and pledge were executed by Aldecoa and Company in favor of the bank as additional security after Aldecoa and Company had failed to meet its obligation to pay the first installment due under the agreement of February 23, 1906, but there is no stipulation whatever in any of these documents or deeds which can in any way be interpreted in the sense of constituting an extension which would bind the bank to wait for the expiration of any new term before suing upon its claim against Aldecoa and Company. We find nothing in the record showing either directly or indirectly that the bank at any time has granted any extension in favor of Aldecoa and Company for the performance of its obli-

gations. The liquidator of Aldecoa and Company authorized the bank to grant certain extensions to some of the provincial debtors of Aldecoa and Company whose debts were to be paid to the bank under the authority conferred upon the bank by Aldecoa and Company. There is a marked difference between the extension of time within which Aldecoa and Company's debtors might pay their respective debts, and the extension of time for the payment of

Aldecoa and Company's own obligation to the bank. If
847 the bank had brought suit on its credit against Aldecoa and

Company for the amount then due on the day following the extension of the time of Aldecoa and Company's debtors for the payment of their debts, it is evident that the fact of such extension having been granted could not have served in any sense as a defense in favor of Aldecoa and Company against the bank's action, although this extension would have been available to Aldecoa and Company's debtors if suit had been brought to enforce their liabilities to Aldecoa and Company. We must, therefore, conclude that the judgment appealed from, in so far as it relates to Doña Isabel Palet, must likewise be affirmed.

The intervener, William Urquhart, assigns these errors:

1. The court erred in holding that the proof fails to show a case for intervention within the meaning of section 121 of the Code of Civil Procedure.

2. That the court erred in failing to give preference to the credit of the liquidator Urquhart for his salary.

The trial court found, as we have said, that Urquhart had failed to show that he had any legal interest in the matter in litigation
848 between the plaintiffs and the defendants, or in the suc-
cess of any of the parties, or any interest against both.

The proof upon this branch of the case consists of the following agreed statement of facts:

Mr. Urquhart is a creditor of Aldecoa and Company in the sum of P21,000 due him for money loaned by him to Aldecoa and Company before they went into liquidation.

Aldecoa and Company in liquidation owe Mr. Urquhart the liquidator P14,000 as salary.

Section 121 of the Code of Civil Procedure provides that:

A person may, at any period of a trial, upon motion, be permitted by the court to intervene in an action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both.

The intervener is seeking to have himself declared a preferred creditor over the bank. According to the above-quoted agreed statement of facts, he is a mere creditor of Aldecoa and Company for the sum of 21,000, loaned that firm before it went into liquidation. This amount is not evidenced by a public document, or any document for that matter, nor secured by pledge or mortgage, while the amount due the bank appears in a public instrument and is also

secured by pledges and mortgages on the property of Aldecoa
849 and Company, out of which the intervener seeks to have his indebtedness satisfied. It is, therefore, clear that the inter-

vener is not entitled to the relief sought, in so far as the P21,000 is concerned.

The bank insists, that, as the intervener had been in the employ of Aldecoa and Company for several years prior to the time that the latter went into liquidation, it cannot be determined what part of the P14,000 is for salary as such employee and what part is for salary as liquidator. We find no trouble in reaching the conclusion that all of the P14,000 represents Urquhart's salary as liquidator of the firm of Aldecoa and Company. The agreed statement of facts clearly supports this view. It is there stated that Aldecoa and Company in liquidation owed the liquidator P14,000 as salary. The agreement does not say, nor can it be even inferred from the same, that Aldecoa and Company owed Urquhart P14,000, or any other sum for salary as an employee of that firm before it went into liquidation. Under these facts, is the intervener a preferred creditor over the bank for this amount?

In support of his contention that he should be declared a preferred creditor over the bank for the P14,000, the appellant cites the decision of the supreme court of Spain of March 16, 1897, and 850 quotes the following from the Syllabus of that case:

That the expense of maintenance of property is bound to affect such persons as have an interest therein, whether they be the owners or creditors of the property; therefore payment for this object has preference over any other debt, since such other debts are recoverable to the extent that the property is preserved and maintained.

There can be no question about the correctness of this ruling of the supreme court of Spain to the effect that the fees of a receiver, appointed by the court to preserve property in litigation, must be paid in preference to the claims of creditors. But this is not at all the case under consideration, for the reason that Urquhart was elected liquidator by the members of the firm of Aldecoa and Company without the consent or approval of the bank or of any other creditor. He did not receive his employment by reason of any judicial act. Whatever may be due him for his services as liquidator is due under a contract of employment between himself and the members of the firm of Aldecoa and Company. Neither do we believe that the contention of the appellant can be sustained under article 1922 of the Civil Code, which provides that, with regard to specified personal property of the debtor, the following are preferred:

851 1. Credits for the construction, repair, preservation, or for the amount of the sale of personal property which may be in the possession of the debtor to the extent of the value of the same.

The only personal property of Aldecoa and Company is the following:

16 shares of the stock of the Banco Español Filipino,
450 shares of the stock of the Compañia Maritima,
330 shares of the stock of the Pasay Estate Company, Limited,
Certain claims against debtors of Aldecoa and Company, mentioned in Exhibit G.

The shares of stock in the Banco Español Filipino and the Com-

pañía Marítima were pledged to the Bank before Aldecoa and Company went into liquidation, so Urquhart had nothing to do with the preservation of these. The stock of the Pasay Estate Company, Limited, was pledged to the bank on August 30, 1907, on the same day that it came into the possession of Aldecoa and Company and by the terms of the pledge the bank was authorized to collect all dividends on the stock and apply the proceeds to the satisfaction of its claim against Aldecoa and Company. The credits set forth
 852 in Exhibit G were assigned to the bank. If it could be held that these two items bring him within the above quoted provisions of article 1922, he could not be declared a preferred creditor over the bank for the P14,000 salary for the reason that, according to his own showing, he had been paid for his services as liquidator up to January, 1910. It is the salary since that date which is now in question. The only property of Aldecoa and Company which the liquidator had anything to do with after 1910 was the real estate mortgages mortgaged to the bank as additional security. These mortgages on real property can not be regarded as personal property, and it is only of personal property that article 1922 speaks.

The judgment appealed from, in so far as it relates to Urquhart, being in accordance with the law and the merits of the case, is hereby affirmed. The appellants, Joaquín and Zoilo Ibañez de Aldecoa, make the following assignments of errors:

1. The court erred in not sustaining the plea of *lis pendens* with respect to the validity of mortgages claimed by the plaintiff, which plea was set up as a special defense by the defendants Joaquín and Zoilo Ibañez de Aldecoa, and in taking jurisdiction of the case and in deciding therein a matter already submitted for adjudication and not yet finally disposed of.

853 2. The court erred in not sustaining the plea of *res adjudicata* set up as a special defense by these defendants with respect to the contention of plaintiff that these defendants are industrial and general partners of the firm of Aldecoa and Company.

3. The court erred in holding that the defendants Joaquín and Zoilo Ibañez de Aldecoa were general partners (*socios colectivos*) of the firm of Aldecoa and Company, and in rendering judgment against them subsidiarily for the payment of the amount claimed in the complaint.

The basis of the first alleged error is the pendency of an action instituted by the appellants Joaquín and Zoilo, in 1908, to have the mortgages which the bank seeks to foreclose in the present action annulled in so far as their liability thereon is concerned. That action was pending in this Supreme Court on appeal, when the present action was instituted (1911), tried, and decided in the court below.

The principle upon which a plea of another action pending is sustained is that the latter action is deemed unnecessary and vexatious. (*Williams vs. Gaston*, 148 Ala., 214; 42 Sou., 552; 1
 854 Cyc. 21; 1 R. C. L., sec. 1.) A statement of the rule to which the facts of the plea must conform in order to entitle the litigant to its benefits, and which has often met with approval, is found in *Watson vs. Jones* (13 Wall., 579, 715; 20 L. ed., 666).

But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or at least such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties.

It will be noted that the cases must be identical in a number of ways. It will be conceded that in so far as the plea is concerned, the parties are the same in the case at bar as they were in the action to have the mortgages annulled. Their position is simply reversed, the defendants there being the plaintiffs here, and vice versa. This fact does not affect the application of the rule. The inquiry must there-

fore proceed to the other requisites demanded by the rule.
855 Are the same rights asserted? Is the same relief prayed for?

The test of identity in these respects is thus stated in 1 Cyc., 28:

A plea of the pendency of a prior action is not available unless the prior action is of such a character that, had a judgment been rendered therein on the merits, such a judgment would be conclusive between the parties and could be pleaded in bar of the second action.

This test has been approved, citing the quotation, in *Williams vs. Gaston* (148 Ala., 214; 42 Sou., 552); *Van Vleck vs. Anderson* (136 Iowa, 366; 113 N. W., 853); *Wetzstein vs. Mining Co.* (28 Mong., 451; 72 P., 865). It seems to us that unless the pending action, which the appellants refer to, can be shown to approach the action at bar to this extent, the plea ought to fail.

The former suit is one to annul the mortgages. The present suit is one for the foreclosure of the mortgages. It may be conceded that if the final judgment in the former action is that the mortgages be annulled, such an adjudication will deny the right of the bank to foreclose the mortgages. But will a decree holding them valid prevent the bank from foreclosing them? Most certainly not. In such

an event, the judgment would not be a bar to the prosecution of the present action. The rule is not predicated upon such a contingency? It is applicable, between the same parties, only when the judgment to be rendered in the action first instituted will be such that, regardless of which party is successful, it will amount to *res adjudicata* against the second action. It has often been held that a pending action upon an insurance policy to recover its value is not a bar to the commencement of an action to have the policy reformed. The effect is quite different after final judgment has been rendered in an action upon the policy. Such a judgment may be pleaded in bar to an action seeking to reform the policy. The cases are collected in the note to *National Fire Insurance Company vs. Hughes* (12 L. R. A. [N. S.], 907). So, it was held in the famous case of *Sharon vs. Hill* (26 Fed., 337), that the action brought by Miss Hill for the purpose of establishing the genuineness of a writing purporting to be a declaration of marriage

and thereby establishing the relation of husband and wife between the parties could not be pleaded in abatement of Senator Sharon's action seeking to have the writing declared false and forged. The court said:

This suit and the action of Sharon vs. Sharon are not brought on the same claim or demand. The subject matter and the relief sought are not identical. This suit is brought to cancel and annul an alleged false and forged writing, and enjoin the use of it by the defendant to the prejudice and injury of the plaintiff, while the other is brought to establish the validity of said writing as a declaration of marriage, as well as the marriage itself, and also to procure a dissolution thereof, and for a division of the common property, and for alimony.

Incidentally, it was held in this case that a judgment of the trial court declaring the writing genuine was not *res adjudicata* after an appeal had been taken from the judgment of the Supreme Court. So, in the case at bar, the fact that the trial court in the former action holds the mortgages invalid as to one of the herein appellants is not final by reason of the appeal entered by the bank from that judgment.

Cases are also numerous in which an action for separation has been held not to be a bar to an action for divorce or vice versa. (Cook vs. Cook N. C., 40 L. R. A. (N. S.), 83, and cases collected in the note). In Cook vs. Cook it was held that a pending action for absolute divorce was not a bar to the commencement of an action for separation.

The above authorities are so analogous in principle to the case at bar that we deem the conclusion irresistible, that the pending action to annul the liability of the two appellant children on the mortgages cannot operate as a plea in abatement in the case in hand, which seeks to foreclose these mortgages. The subject matter and the relief asked for are entirely different. The facts do not conform to the rule and it is therefore not applicable.

With reference to the second alleged error, it appears that a certified copy of the judgment entered in the former case, wherein it was declared that these two appellants, together with their sister Cecilia, were creditors and partners of Aldecoa and Company, was offered in evidence and marked Exhibit 5. This evidence was objected to by the plaintiff on the ground that it was *res inter alios acta* and not competent evidence against the plaintiff or binding upon it in any way because it was not a party to that action. This objection was sustained and the proffered evidence excluded. If the evidence had been admitted, what would be its legal effect? That was an action in personam and the bank was not a party. The judgment, is therefore, binding only upon the parties to the suit and their successors in interest (sec. 306, Code of Civil Procedure, No. 2).

The question raised by the third assignment of errors will be dealt with in a separate opinion wherein the appeal of Cecilia Ibañez de Aldecoa will be disposed of.

The appellants whose appeals are herein determined will pay their respective portions of the cost.

Arellano, C. J., Torres, and Araullo, J.J., concur.
Moreland, J., concurs in the result.
Johnson, J., dissents.

860 Thereafter, and on the 10 day of April, 1915, the defendant Joaquín Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Isabel Palet y Gabarro filed a motion for rehearing which was subsequently denied by the court on the 15 day of July, 1915.

Thereafter, and on the 27 day of July, 1915, final judgment was entered in the supreme court in the above entitled cause as follows:

(Title of the Court and Cause Omitted.)

The court having regularly acquired jurisdiction for the trial of the above entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 23rd day of March, 1915.

By virtue thereof, it is hereby adjudged and decreed that the plaintiff corporation recover from defendant Aldecoa and Company, and from defendant Isabel Palet y Gabarro jointly and severally the sum of 344,924.23 with interest thereof at the rate of 7% per annum beginning from the 10 day of August, 1912, until complete payment thereof with the costs of both instances; that in case said appellants should not pay the sum which is allowed in this judgment within the term of 60 days beginning from the date in which the defendant should receive notice that the record of this case has been returned to the court of first instance, the plaintiff corporation may foreclose the mortgage executed by the defendant Aldecoa and Company and Isabel Palet y Gabarro, Joaquín Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa on their real and personal property
861 in favor of plaintiff corporation which property is described in detail in the findings of fact of the lower court, that the liability of of the defendants Joaquín Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa in regard to the payment of the amount which by virtue of this judgment Aldecoa and Company and Isabel Palet are obliged to pay is limited to the amount of their respective shares in the real property mortgaged by them in favor of the plaintiff corporation as it appears in the documents exhibits A and B and which in the findings of fact of the lower court is described as existing on the date on which said documents were executed; that plaintiff corporation recover nothing on its complaint against the defendant, Cecilia Ibañez de Aldecoa and that the judgment of the lower court

in so far as agrees with the present decision is hereby affirmed and reversed as to all other particulars.

(Sgd.)

V. ALBERT,
Clerk Supreme Court, P. I.

A true copy.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court.

On the 22nd day of July, 1915, defendants Isabel Palet y Gabarro, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa filed their exception to the order denying the new trial and to the judgment rendered in said case and announced their intention to appeal from said decision as well as from the judgment rendered in accordance with the same before the Supreme Court of the United States through the corresponding writ of error and appeal. The exception and notice of appeal is as follows:

(Title of the Case Omitted.)

Come now the attorneys for the defendants and appellants in the above entitled case and file their exception against the order of this court denying the petition for setting aside of the decision
862 and for a rehearing of the case, and the defendants and appellants Isabel Palet y Gabarro, Joaquin Ibañez de Aldecoa, and Zoilo Ibañez de Aldecoa ask that this exception be duly registered giving hereby notice at the same time of their intention to appeal from same before the supreme court of the United States through the corresponding writ of error and appeal.

Manila, July 21st, 1915.

(Sgd.) SANZ, OPISSO & LUZURIAGA,
Attorneys at Law, 20 Plaza Moraga Binondo, Manila, P. I.

Received copy this 22nd day of July, 1915.

GILBERT, HAUSSERMANN, COHN & FISHER,
Attorneys for Plaintiff.

Petition for a Receiver.

(Title of Court and Cause Omitted.)

To the Honorable Grant F. Trent, Vacation Justice:

Now comes the Hongkong and Shanghai Banking Corporation, plaintiff in the above entitled cause and respectfully prays for an order appointing a receiver to take possession of all the real property in the City of Manila, Philippine Islands, the subject matter of this action, mortgaged to said plaintiff by Doña Isabel Palet, Don Joaquin Ibañez de Aldecoa, and Don Zoilo Ibañez de Aldecoa; to collect the revenue from said real property, and to apply the same,

or such part thereof as may be proper, to the upkeep and repair of the property, the payment of insurance and taxes thereon, and to retain the balance, if any, subject to the final decision of the
863 above-entitled cause, with the exception of such portion of the net revenue of said property as may pertain to the defendant Cecilia Ibañez de Aldecoa.

This motion will be made upon the following facts, shown by the record, and by the attached affidavit:—

I.

That on the 10th day of August, 1912, the plaintiff obtained a judgment against the defendants, Aldecoa and Company and Coña Isabel Palet, jointly and severally for the sum of P344,924.23, together with interest thereon until paid at the rate of seven per cent, per annum, compounded semi-annually.

II.

That on the same day judgment was rendered by the lower court against the defendants, Doña Isabel Palet, Don Joaquín Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa for the foreclosure for the satisfaction of the said judgment of the mortgage executed by them to secure the payment of the obligation of Aldecoa and Company to plaintiff, as more particularly shown in the decision of the trial court, reference to which is hereby made as a part hereof.

III.

That since the rendition of the said judgment part of the personal property pledged by Aldecoa and Company to the plaintiff has been sold with the consent of Aldecoa and Company and the proceeds applied to the partial discharge of of the said judgment.

IV.

That the amount now due upon the said judgment is the sum of P289,111.58.

V.

That Aldecoa and Company, in liquidation, are insolvent,
864 and that the defendant Doña Isabel Palet has no property, so far as plaintiff is aware, subject to the execution of this judgment, other than that mortgaged by her to plaintiff as shown by the said decision of the lower court.

VI.

That the value of all the property of Aldecoa and Company applicable to the satisfaction of said judgment, together with the value

of all the property of the other defendants mortgaged to the plaintiff Bank, is insufficient to discharge the said judgment.

VII.

That the mortgaged property, more particularly the improvements on the mortgaged real estate described in paragraphs 12, 13 and 9 of the findings of fact of the lower court, is being suffered by defendants in possession thereof to deteriorate, as shown by the attached affidavit of George B. Asp and Albert E. Field, marked Exhibits "A" and "B," and made a part hereof.

VIII.

That plaintiff is informed and believes, and upon such information and relief avers that it is the intention of the defendants above named to appeal to the Supreme Court of the United States from the decision of this Honorable Court heretofore rendered herein in favor of this plaintiff.

IX.

That unless a receiver is appointed with authority to apply the revenues of the mortgaged property to its upkeep and preservation the defendants will continue to permit it to deteriorate during the pendency of their appeal, and the said property will thereby suffer great depreciation of value, to the irreparable damage of plaintiff.

865 Manila, P. I., June 15th, 1915.

GILBERT, HAUSSERMANN, COHN &
FISHER,

(Sgd.) p. p. F. C. FISHER,

*Attorneys for the Hongkong and
Shanghai Banking Corporation.*

CITY OF MANILA,
Philippine Islands:

Fred C. Fisher, being first duly sworn, deposes and says: I am one of the attorneys for the plaintiff in the above entitled cause; I have read the foregoing application for the appointment of a receiver, and am familiar with the contents thereof; that the statements made in said application are true to the best of my knowledge and belief, except such as are made on information and belief, and as to the same I verily believe them to be true.

(Sgd.)

FRED C. FISHER.

Subscribed and sworn to before me at Manila, P. I., June 30, 1915,

deponent having exhibited certificate of registration No. F47320 issued at Manila, April 10, 1915.

[NOTARIAL SEAL.] (Sgd.). J. PEREZ CARDENAS,
Notary Public.

My commission expires December 31, 1915.

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EXHIBIT "A."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

HONGKONG AND SHANGHAI BANKING CORP'N, Plaintiff and Appellee,

vs.

ALDECOA & Co., in Liquidations, et als., Defendants and Appellants.

866 CITY OF MANILA,
Philippine Islands, ss:

Geo. B. Asp, being first duly sworn, deposes and says:—

I am a resident of the City of Manila, and by occupation an engineer and architect; I have been for sometime familiar with the lot of property on the corner of Calle Cortabitarte and Calle M. H. del Pilar (formerly Calle Real) in Malate, city of Manila; that said property consists of a large tract of land and of nine dwelling houses erected thereon; that I am a resident of one of the said houses and am particularly familiar with the four houses numbered, respectively, 1269 C, 1269 D, 1275 and 1283, M. H. Del Pilar; that the said houses are at present in a very bad condition, the particular defects of each being as specified hereinafter; that the other five houses upon the said property, so far as can be determined from their exterior appearance, are likewise in very bad condition, showing lack of care in many particulars; the paint is in bad condition, and the eave boards are many of them dropping from the nails; that the condition of all the houses on the said property is such that unless repairs are made promptly they will soon become untenable and suffer a constantly increasing degree of depreciation in value.

House No. 1283:

The nosing of tiled steps are loose.

The threshold between hall and kitchen downstairs is loose.

The lower part of wall in bathroom downstairs is rotted out, allowing the water from shower to enter and rot the beams.

The back door is hanging on one hinge.

The windows in kitchen cannot be closed as hinges are rusted off.
The railings of back stoop are falling.
The ceiling in one room upstairs has a big hole.
The W. C. on both floors are constantly breaking down.

867 House No. 1275:

The nosing of steps are loose.
The floor in hall upstairs is bad.
The back stair and porch is unsafe.
The back wall is admitting rain.

House No. 1269 D:

The South window in entrance hall is hanging on one hinge and will not be safe in a typhoon.
The dining room floor is bad.
The floor of the stair landing has a big hole.
The balustrade of the stair is badly eaten by anai.

House — 1269 C:

The nosing of the steps are loose.
The balustrade of the stairs is eaten by anai.
The door of a closet on rear porch is off.
The floor of the sala upstairs is bad.
The threshold between sala and south room has given away leaving great holes.

General:

The eaveboards and ceiling under eaves of all the houses are rotten, falling off, or already off.
Many down spouts are disconnected or leaking.
The roof is leaking in some places.
The houses have not had any paint to protect them for at least seven years.
All rooms are delapidated and need painting except some 15 rooms painted by present tenant.
The wooden fences around the houses are rotted out.
The iron fences need painting.

(Sgd.)

GEORGE B. ASP.

Subscribed and sworn to before me at Manila, P. I., this 17th day of June, A. D. 1915, deponent exhibiting to me his cedula certificate No. F24703 issued at Manila, February 24th, 1915.

[NOTARIAL SEAL.] (Sgd.) J. PEREZ CARDENAS,
Notary Public.

My commission expires December 31, 1915.

Reg. No. 1. Page No. 72. Doc. No. 335.

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EXHIBIT "B."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and Ap-
 pellee,

vs.

ALDECOA & Co., in Liquidation, et als., Defendants and Appellants.

CITY OF MANILA,
Philippine Islands, ss:

Albert E. Field, being first duly sworn, deposes and says:—

I am a resident of the City of Manila, and by occupation a Chief Building Inspector, City of Manila; I have been for sometime familiar with the lot of property on the corner of Calle Cortabitarte and Calle M. H. del Pilar (formerly calle Real), in Malate, city of Manila; that said property consists of a large tract of land and of nine dwelling houses erected thereon; that many of the said houses are at present in a very bad condition, the particular defects of each being as specified hereinafter; that the conditions of many of the houses on the said property is such that unless repairs are made promptly they will soon become untenable and suffer a constantly increasing degree of depreciation in value.

House No. 1269 A Calle M. H. del Pilar:

Corner posts of main building rotten above splice.

The main posts of bath room badly rotted, also cill places on which they rest.

869 Back stair leading to 2nd floor badly rotted and dangerous.

Platform leading to back stair way dangerous, also brackets which carry part of upstairs kitchen.

Iron rods supporting media agua, badly rust eaten, as to be dangerous during heavy wind, some are at present bent.

Eaves around entire building, badly decayed and hanging sheets of tin dangerous to occupants of building.

Down spouts and gutters leak, some are entirely disconnected.

Ceiling under media agua hanging loose and rotted away in many places.

Roofing badly rusted and in need of paint.

Entire exterior of building lacks paint. Many pieces of mouldings of building exterior loose.

Floor of stable sunken, joist and posts at one end decayed.

Ceiling down stairs show evidence of having been wetted by rain storm water passing thru floor, also badly in need of paint.

Nosing of steps eaten away by andy. Hinges of doors down stairs in one room rusted off, and door broken.

Lowers in windows down stairs broken off, and window useless. Ceiling of toilet room badly broken.

Railings of stair way leading to 2nd floor very loose and dangerous for children.

Railings of azotea of 2nd floor very loose.

Wooden slide window- under main windows blow out during storm and allow rain to enter on floor flooding room.

Palings from entire fence missing.

870 House No. 1269 B Calle M. H. del Pilar:

Post casings in front of building decayed and falling off.

Three main posts of building decayed.

Eaves of building badly decayed and hanging loose.

Roof very badly rusted and in need of paint.

Timbers in servants' toilet badly decayed.

Rear stairway to 2nd floor extremely dangerous.

Nosing from back step rotted away.

Exterior of building badly in need of paint.

Many pieces of moulding missing from exterior of building.

Rods that support media agua, badly rust eaten.

Two posts of stable rotted also many large holes in roof.

Floor joists of 1st floor main building rotted of- at their support.

All palings from front fence gone. One floor joist of the floor in kitchen broken in two on 2nd floor. Nosing of steps leading to upstairs displaced.

Railing of stairway leading to 2nd floor worm eaten and loose.

Hole in entresuelo floor.

House No. 1259 C Calle M. H. del Pilar:

Media agua around 2nd floor windows in need of repairs.

Casings from lower part of posts have rotted and fallen away.

Casings on interior post badly worm eaten.

One main post on 2nd floor badly worm eaten.

Several holes on 2nd floor in front room.

Eaves of roof loose and falling.

Down spouts and gutters of roof in bad condition and leaky.

871 Exterior of building badly in need of paint.

Roof rusted and in need of paint.

Dangerous hole in floor leading from sala to one rear bed rooms.

Railings of stair leading to 2nd story very worm eaten.

Flushing tank of toilet on 2nd floor leaks badly.

Several floor joists rotted away from supports.

Nosing of back steps leading to yard very badly decayed.

Railing of back porch entirely missing.

Servants' toilet door broken off, hinges, and several other doors near are in bad need of repair.

Rear stairs leading to 2nd story of building very dangerous.

Palings of fence in front of building all missing, also on stone pillar of fence.

Ground floor has sunken at center of entrance way 8 inches.

Hinges on windows of entresuelo rusted off and falling.

Partition frameings on 1st floor toilet rotten.

House No. 1269 D Calle M. H. del Pilar:

Windows of first floor off their hinges at entrance to building.

Railing of stair way leading to 2nd floor loose and worm eaten and a large hole in floor landing of stair way.

Sheets of galvanized iron hanging from eaves of building and dangerous.

Down spouts and gutters of roof in a broken condition.

Media agua around 2nd floor windows in bad need of repair, boards hanging loose.

872 Exterior of building badly in need of paint.

Roof rusted and in need of paint.

Front fence minus palings.

Leanto used as kitchen at rear of building very leaky.

Rear corner post of building rotted at base.

Ceiling of media agua over 2nd story windows loose and very dangerous.

House No. 1275 calle M. H. del Pilar:

Back step leading to yard in bad condition.

Exterior of building in need of paint. Down spouts and gutters of roof in very bad condition.

Palings of fence all gone except one section at interior of lot.

Front azotea leaks down thru building, has stained ceiling and walls.

Rear steps leading to 2nd floor in need of repair, very loose.

Rear tile step to back yard broken.

House No. 1283 Calle M. H. del Pilar:

Railing of stairs of entresuelo very loose.

Plaster falling from bath room walls.

Railing all gone from back azotea porch.

Floors in front bedroom broke thru to ceiling.

Cloth ceiling hanging very loose.

Kitchen windows all broken off their hinges.

Siding under windows of ditchen broke and decayed.

Doors leading from kitchen to outside porch or azotea broken off its hinges.

873 Partitions of bath room broke. Ceiling of bath room broke and hanging.

Rear steps leading to backyard, broken.

Railings around step platform dangerous.

Cornices and eave of roof in need of extensive repair.

Rear and side of exterior of building wheather worn and badly in need of paint.

All posts of outbuildings rotted off at their bases and end of building rotted.

Roof rusty and in need of paint.

Some down spouts disconnected from eave of roof.

Rear corner post of main building show- signs of decay at connection of girders to same.

House No. 5 calle cortabitarte:

Ceiling of media agua decayed in parts of front of building over 2nd story windows.

Roof in need of paint very badly rusted.

All rear posts of main building badly decayed at bases.

House No. 7' calle Cortabitarte:

All fence railings broken and many missing.

Eaves of roof badly broken and hanging loose.

Roof badly rusted and in bad need of paint.

Exterior of building badly wheather worn and in need of paint.

Down spouts and gutters of roof broken and leak very bad.

Windows of bath room broken off. Glass broken from up stair-windows.

Interior of building lack- paint. Stable posts decayed and worm eaten.

874 Girder of back platform leading to yard decayed.

Main girder of front of building decayed.

House No. 1261 M. H. del Pilar:

Roof lack- paint and leaks considerable.

Part of media agua over 2nd story windows decayed.

Building in very fair condition.

Buildings cited in above statement, have depreciated in value due to lack of repairs as follows, viz:

NOTE.—Very approximate values were used in obtaining the value of depreciation, also prices were obtained by using the market value of recent normal times.

House No. 1269 A Int. Calle M. H. del Pilar.

Value of building if in good condition.....	P7,830.00
Amount of depreciation 40%.....	"3,132.00

House No. 1269 B Calle M. H. del Pilar.

Value of building if in good condition.....	P12,000.00
Amount of depreciation 35%.....	" 4,200.00

House No. 1269 C Calle M. H. del Pilar.

Value of building if in good condition..... P9,784.00
 Amount of depreciation 45%..... "4,401.80

House No. 1269 D Calle M. H. del Pilar.

Value of building if in good condition..... P11,334.00
 Amount of depreciation 25%..... " 2,888.50

House No. 1275 E Calle M. H. del Pilar.

Value of building if in good condition..... P12,550.00
 Amount of depreciation 20%..... " 3,510.00

House No. 1283 Calle M. H. del Pilar.

Value of building if in good condition..... P15,746.25
 Amount of depreciation 30%..... " 4,723.88

875

House No. 7 Calle Cortabitarte.

Value of building if in good condition..... P20,900.00
 Amount of depreciation 15%..... " 3,135.00

House No. 1 Calle Cortabitarte.

Value of building if in good condition..... P13,352.00
 Amount of depreciation 30%..... " 4,005.00

House No. 1261 Calle M. H. del Pilar.

Value of building if in good condition..... P21,852.00
 Amount of depreciation 15%..... " 3,277.80

(Sgd.)

ALBERT E. FIELD.

Signed and sworn to before me this 29th day of June, 1915.
 Cedula No. F 12279 issued at Manila, Jan. 23, 1915.

[NOTARIAL SEAL.]

(Sgd.)

JOHN N. HAUSSERMANN,

Notary Public.

My commission expires December 31st, 1916.

Doc. No. 75. Page No. 21. Reg. No. 1.

Received copy.*

ANTONIO SANZ,

By ANTONIO M. OPISSO.

The above petition for receiver having been set for hearing on the 5th day of July, 1915, the parties asked for a continuance of the

same and on the 9 day of July, 1915, the following agreement was filed in the above entitled case:

(Title of the Court and Cause Omitted.)

Now come the defendants in the above entitled cause and hereby consent to the appointment of a receiver as prayed for by the plaintiff herein in its petition to the Honorable Grant F. Trent, 876 Vacation Justice of this Honorable Court, dated June 15, 1915, provided that plaintiff shall consent that such part of the revenue from the mortgaged premises as shall not be necessary for the payment of taxes, insurance, repairs and upkeep shall be paid by the Receiver, during the pendency of this action, to the defendants in accordance with their respective interests in said mortgaged premises; that the Receiver shall expend out of the receipts from the rental of the said mortgaged premises such sums as may be necessary to put and keep the buildings in good tenantable conditions, and prevent any deterioration thereof, other than that which is due to ordinary wear and tear; that Mr. Zoilo Ibañez de Aldecoa shall be appointed receiver of the said mortgaged properties upon giving bond in the sum of P5,000.00, with sureties to be approved by the Honorable Grant F. Trent.

Manila, P. I., July 8th, 1915.

(Sgd.)

ANTONIO SANZ,
By ANTONIO M. OPISSO,
Attorney for Aldecoa & Co.
ALFREDO CHICOTE,
Attorneys for Doña Isabel Palet and
Don Joaquín and Don Zoilo de Aldecoa.

(Sgd.)

Plaintiff agrees to the appointment of the receiver upon the terms above indicated.

GILBERT, HAUSSELMANN, COHN &
FISHER.

(Sgd.) p. p. F. C. FISHER,

Attorneys for the Hongkong and
Shanghai Banking Corporation.

In view of the foregoing agreement the Supreme Court of the Philippine Islands on the 9th day of July, 1915, rendered the following order:

(Title of the Court and Cause Omitted.)

877 This matter is now before the undersigned upon an application by the plaintiff for the appointment of a receiver to take possession of the mortgaged real estate which is the subject matter of the actions. The petition is made upon the ground that the value of the mortgaged property is not sufficient to satisfy the judgment, and that the defendants are permitting it to suffer deterioration, and will probably continue to do so; that

defendants are about to take an appeal to the Supreme Court of the United States against the judgment of this Court heretofore rendered herein.

The defendants have filed in writing a statement to the effect that they do not oppose the granting of the petition of plaintiff, subject to certain minor changes, to which plaintiff has consented.

It is therefore ordered that Zoilo Ibañez de Aldecoa be and he hereby is appointed receiver of the mortgaged real estate situated in the City of Manila, referred to in plaintiff's petition of June 15th, 1915, and particularly described in paragraphs 9, 12 and 13 of the findings of fact of the Trial Court in its decision rendered herein on August 12, 1912, which are hereby incorporated herein by reference, upon giving a bond in the sum of Five Thousand Pesos (P5,000.00), Philippine Currency, with good and sufficient sureties, to be approved by the undersigned, conditioned upon the faithful performance by the said Zoilo Ibañez de Aldecoa as such receiver, of the duties of such office.

The receiver hereby appointed shall, upon giving the security required, and taking the oath of office, take possession of the said described mortgaged real estate, rent the same upon the best terms available, and shall devote the revenue so derived to the payment of taxes and insurance upon the said properties, and to making such repairs to the buildings as may be necessary to put
878 them into proper tenantable condition, to keep them in such condition, and to prevent any deterioration other than that which may be due to ordinary wear and tear. Any balance which may remain in the hands of the receiver, after making the expenditures necessary in accordance with the instructions herein contained, shall be paid by him to such persons as may be entitled thereto proportionately.

The receiver shall file monthly accounts, not later than the 10th day of each month, of all receipts and expenditures of his receivership incurred or made during the preceding month.

Manila, P. I., July 9, 1915.

(Sgd.)

GRANT F. TRENT,
Vacation Justice.

In compliance with this order, Zoilo Ibañez de Aldecoa filed on the 20th day of July, 1915, a bond as receiver in the above entitled case for the sum of P5,000.00, Philippine currency, the bondsmen being Fernando Zobel and William Urquhart, which bond was approved by the court on the same day.

Thereafter, and on the 6th day of August, 1915, the defendants Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet and Isabel Palet y Gabarro filed the following petition for an appeal to the Supreme Court of the United States:

879 Supreme Court, Philippine Islands, Clerk's Office. Received
Aug. 6, 1915, 4:05 p. m.

R.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437. Civil No. 8519.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and
Appellee,
versus
ALDECOA & COMPANY, in Liquidation, et al., Defendants and
Appellants.

Petition for an Appeal to the Supreme Court of the United States.

To the Honorable Chief Justice or any Associate Justice of the Supreme Court of the Philippine Islands:

The petition of Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet, and Isabel Palet y Gabarro, viuda de Aldecoa; respectfully shows to this Honorable Court:

I.

That on the 27th day of July, 1915, A. D., the Supreme Court of the Philippine Islands rendered a final decree against these
880 your petitioners, in a certain cause wherein the Hongkong and Shanghai Banking Corporation was plaintiff and your petitioners, together with Aldecoa and Company and Cecilia Ibañez de Aldecoa, were defendants; in which cause, the Hongkong and Shanghai Banking Corporation sought to recover jointly and severally from all the defendants in said cause the sum of P412,504.89 together with interest at the rate of 7% per annum and, in default of payment of said sum by the firm of Aldecoa and Company, one of the defendants in said cause, then to foreclose on certain properties belonging to these petitioners, alleged to have been mortgaged to said Banking Corporation to secure the payment of the sum of P475,000.00, alleged to be owed by the said firm of Aldecoa and Company to said Hongkong and Shanghai Banking Corporation all in accordance with a certain agreement and mortgage deed, alleged to have been executed by these petitioners and by Aldecoa and Company, on the 23rd day of February, 1906, A. D.; and wherein your petitioners Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa alleged that said mortgage alleged to have been executed by them on the 23rd day of February, 1906, A. D., was null and void and was given without any consideration, and disclaimed any liability for any debt of the firm of Aldecoa and Company, 1st because they had

never been partners of said firm; 2nd because at the time the said mortgage was executed they were minors and could not
881 validly encumber their real or personal property; 3rd because although they had been granted a so-called emancipation by their mother, yet such emancipation was unlawful, null and void; 4th because there never had been any consideration for said contract; 5th because said contract had been signed by these petitioners by virtue of false representations and false inducements made by the parties who were to be benefitted by the same; and because of other reasons more fully set forth alleged and shown in the answer filed by these petitioners to the complaint of the Hongkong and Shanghai Banking Corporation in the above entitled case; these petitioners, furthermore, alleging that the action of the Hongkong and Shanghai Banking Corporation was premature, inasmuch as there was another action pending at that time (and is still pending now) wherein these petitioners, based on the grounds above stated, asked that the mortgage contract executed on the 23rd day of February, 1906, A. D., be declared null and void; and your petitioner Isabel Palet y Gabarro viuda de Aldecoa filed an answer admitting the execution of the mortgage contract but disclaimed to be bound by the same, 1st because the plaintiff Bank had failed to sue Aldecoa and Company immediately after this firm became in default in respect to its liability to the plaintiff Bank; 2nd because the Bank had granted extensions to the debtors of Aldecoa and Company where debts, together with securities had been taken charge of by the Bank; and 3rd
882 because by reason of this conduct on the part of the plaintiff Bank, as creditor of Aldecoa and Company, the latter, and consequently this petitioner Isabel Palet y Gabarro, viuda de Aldecoa, as subsidiary debtor, (she being a partner of said firm), had been unable to pay off the liability to the Bank at maturity, and were unable to apply the property of Aldecoa and Company to the satisfaction of its obligation in accordance with the agreement contained in the aforementioned contract of February 23, 1906, A. D.

II.

That a decree was rendered by the Court of First Instance of the City of Manila, sentencing the defendant, Aldecoa and Company, to pay the sum prayed for in the complaint and, in default thereof, the property alleged to have been mortgaged by your petitioners be sold to satisfy said sum, decreeing the foreclosure of said mortgage.

III.

That the said decree was affirmed with the exception that it was ordered that judgment should be rendered jointly and severally against Aldecoa and Company and your petitioner Isabel Palet y Gabarro, viuda de Aldecoa, and that it relieved Cecilia Ibañez de Aldecoa from all liability, dismissing the action as to that de-
883 fendant. Said decision of the Supreme Court of the Philip-

pine Islands was rendered by a majority of said Supreme Court, Justice E. Finley Johnson dissenting; as will appear by reference to the record and proceedings in said cause.

IV.

That the said Supreme Court is the highest Court of the Philippine Islands in which a decision in said cause can be had.

And your petitioners, conceiving themselves aggrieved by said decree of the Supreme Court of the Philippine Islands made and entered on the 27th day of July, 1915, A. D., in the above entitled case, as hereinbefore alleged, do hereby appeal from said decree to the Supreme Court of the United States of America, under Section 10 of the Act of Congress of July 1st, 1902, entitled "The Philippine Bill," because the value in controversy in this cause exceeds the sum of \$25,000.00, currency of the United States, as appears from the affidavit of Zoilo Ibañez de Aldecoa, filed herewith and made part hereof, and because of the errors specified in the assignment of errors filed herewith; and your said petitioners pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers and evidence upon which said decree was made duly
584 authenticated, may be sent to the Supreme Court of the United States.

Dated this 5th day of August, 1915.

ANTONIO M. OPISSO,
Attorney for Petitioners.

20 Plaza Moraga, Manila, P. I.

UNITED STATES OF AMERICA,
City of Manila, Philippine Islands, ss:

Zoilo Ibañez de Aldecoa, merchant, of lawful age, being duly sworn, on his oath says:

That he is one of the defendants and appellants in the above entitled case; and that the value in controversy exclusive of all costs, exceeds the sum of Twenty Five Thousand Dollars (\$25,000.00) United States Currency.

ZOILO I. DE ALDECOA.

Subscribed and sworn to before me, this 6 day of August, 1915, at Manila, Philippine Islands. Affiant exhibited his cedula No. F-33,-879, issued at Manila, P. I., on the 18 day of March, 1915.

[Seal Antonio Sanz, Notario Público, Manila, Islas Filipinas.]

ANTONIO SANZ,
Notary Public.

My commission expires on December 31, 1916.

Reg. No. 303. Page 66.

R.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437. Civil No. 8519.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff
and Appellee,
versus
ALDECOA AND COMPANY, in Liquidation, et al., Defendants and Ap-
pellants.

Assignment of Errors.

Now come the defendants and appellants in the above entitled case, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Isabel Palet y Gabarro, and respectfully submit that in the record, proceedings and final judgment of the Supreme Court of the Philippine Islands in the above entitled case, there is manifest error in this, to wit:

I.

In finding that the firm of Aldecoa and Company, on February 23, 1906, obtained a credit in account current up to the sum of P450,000.00.

886

II.

In making the following finding, to wit:

"This is especially true in the case under consideration for the reason that it was a well known fact that Aldecoa and Company was insolvent."

III.

In not finding that the Bank could not institute proceedings to foreclose the mortgages alleged to have been executed by these defendants without first having instituted proceedings, obtained judgment and exhausted all its remedies to collect and reduce to cash all the assets of Aldecoa and Company, especially in view of the following finding made by the Court, to wit:

"That the Bank was expressly empowered to take any action which might be necessary, judicially or extrajudicially, for the collection of these credits."

IV.

In holding that the defendants Joaquin and Zoilo Ibañez de Aldecoa were debtors in solidum with Aldecoa and Company.

887

V.

In making the following finding:

"If two or more persons are debtors in solidum of a third person, and one or more of such debtors constitute mortgage-s upon their real property situate in the jurisdiction of the Court, the creditor, in case his obligation is not paid at maturity, may include all solidary debtors in the same suit and secure a joint and several judgment against them, as well as judgments of foreclosure upon the respective mortgages,"

and applying this principle to the present case:

VI.

In finding that Urquhart, the liquidator of Aldecoa and Company was given authority by all the sureties to authorize the bank to give extensions to the debtors of Aldecoa and Company for the payment of their debts.

VII.

In ordering that the plaintiff corporation recover from Aldecoa and Company and Isabel Palet y Gabarro, jointly and severally, without directing for the benefit of the appellant, Isabel Palet y

888 Gabarro, that the property of Aldecoa and Company should be exhausted before the plaintiff firm should be entitled to have recourse to the property of said Isabel Palet y Gabarro for the satisfaction of its judgment.

VIII.

In failing to hold that Isabel Palet y Gabarro's obligation as surety has been extinguished in accordance with the provisions of Article 1851 of the Civil Code.

IX.

In making the following finding, to wit:

"We find nothing in the record showing either directly or indirectly that the Bank has at any time granted any extension in favor of Aldecoa and Company for the performance of its obligation."

X.

In failing to find that there was no consideration for the mortgage contract executed by appellants Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa.

XI.

889 In not sustaining the plea of "another suit pending" with respect to the validity of the mortgages claimed by the plaintiff, which plea was set up as a special defense by the

defendants Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, and in taking jurisdiction of the case and deciding therein a matter submitted for adjudication and not yet finally decided or disposed of; especially in view of the following finding made by the Court, to wit:

"that if the final judgment in the former action is that the mortgages be annulled, such an adjudication will deny the right of the Bank to foreclose the mortgage."

XII.

In finding that the defendants and appellants Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa ratified the contract of February 23, 1906, on June 13, 1907.

XIII.

In not holding that defendants Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa are in no way liable for any part of the indebtedness of Aldecoa and Company.

890

XIV.

In rendering judgment against these defendants and ordering the foreclosure of a mortgage which these defendants claim that is null and void.

XV.

In denying the motion for a new trial.

Respectfully submitted,

ANTONIO M. OPISSO,
Attorney for Appellants.

20 Plaza Moraga, Manila, P. I.

Manila, P. I., August 5th, 1915.

891 Supreme Court, Philippine Islands, Clerk's Office. Received
Aug. 6, 1915, 4.05 p. m.

R.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437. Civil No. 8519.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff
and Appellee,

versus

ALDECOA AND COMPANY, in Liquidation, et al., Defendants and
Appellants.

Know all men by these presents, that we, Zoilo Ibañez de Aldecoa, for myself and as assignee of all the right, title and interest of Joaquín Ibañez de Aldecoa; and Isabel Palet y Gabarro, viuda de Aldecoa, through my attorney in fact, Zoilo Ibañez de Aldecoa, as principal, and William Urquhart and Fernando Zobel, as sureties, are held and firmly bound unto the Hongkong and Shanghai Banking Corporation in the sum of five Hundred Dollars (\$500.00), United States Currency, to be paid to the said obligee, its successors, representatives, and assigns, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

892 Sealed with our seals and dated this —th day of August,
A. D. 1915.

Whereas, the above named appellants have prosecuted an appeal in the Supreme Court of the United States, to reverse the judgment rendered in the above entitled action by the Supreme Court of the Philippine Islands.

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void: otherwise to remain in full force and effect.

p. p. ISABEL P. YDA. DE ALDECOA.
ZOILO I. DE ALDECOA.
FERNANDO ZOBEL.
ZOILO I. DE ALDECOA.
WM. URQUHART.

Signed, sealed and delivered in the presence of:

LORENZO LIMBRIO.
JOSÉ GALÁN BLANCO.

UNITED STATES OF AMERICA,

City of Manila, Philippine Islands, ss:

Wm. Urquhart and Fernando Zobel, the sureties who executed the foregoing bond, being first duly sworn upon oath, each for
 893 himself, says: That he is a resident and property holder in the Philippine Islands, that he is solvent for the amount mentioned in said obligation as penalty, apart of all his debts and obligations and of property subject to execution, and that he executed the foregoing bond as an act of his own free will and deed.

WM. URQUHART,
 FERNANDO ZOBEL.

Subscribed and sworn to before me, this 6th day of August, 1915, by William Urquhart and Fernando Zobel; the first did not exhibit cedula, being of 60 years of age, and Mr. Fernando Zobel exhibited his cedula No. F-5673 issued at Manila, P. I., on the 11th day of January, 1915, respectively.

[Seal of Antonio Sanz, Notario Público, Islas Filipinas.]

ANTONIO SANZ,
Notary Public.

My commission expires December 31, 1916.

Reg. Not. No. 304, Fol. 66.

894 On the 10th day of August 1915, counsel for the Hongkong and Shanghai Banking Corporation filed the following motion before the supreme court of the Philippine Islands:

(Title of the Court and Cause Omitted.)

Now comes the Hongkong and Shanghai Banking Corporation, appellee in the above entitled cause, by its undersigned attorneys, and respectfully represents to this Honorable Court that it has been informed that the defendants, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa and Doña Isabel Palet have filed with the Court a petition for an appeal to the Supreme Court of the United States, and have submitted a supersedeas bond in the sum of P500.00, signed by the principals, and by Messrs. Urquhart and Zobel, as sureties; that the amount of the bond tendered by the said defendants for the purposes of obtaining a supersedeas of execution during the pendency of their proposed appeal is grossly inadequate; that appellee desires an opportunity to be heard by this Honorable Court or such member thereof as may have the matter of the approval of the proposed supersedeas bond in charge, upon the subject of the proper amount of bond to be required and that it be likewise given an opportunity to be heard on the matter of the qualifications of the sureties.

Wherefore, petitioner prays that a day be set for the hearing of the matter of the allowance of the appeal of the above named defend-

ants and of the determination of the amount of the bond to be furnished by them if it is desired that this appeal is to have the effect of staying the execution of the judgment of this Honorable Court herein.

Manila, P. I., August 9th, 1915.

895

GILBERT, HAUSSERMANN, COHN &
FISHER,

(Sgd.) p. p. F. C. FISHER,

*Attorneys for the Hongkong and
Shanghai Banking Corporation.*

Received copy this 10th day of August, 1915.

(Sgd.)

ANTONIO M. OPISSO.

Thereafter, and upon due consideration of the oral and written argument filed by the parties for and against the contention of said motion, the supreme court of the Philippine Islands, on the 26th day of August, 1915, rendered the following order:

896 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and
Appellee,
versus

ALDECOA & COMPANY, in Liquidation, et al., Defendants and Ap-
pellants.

Order.

The petition for an appeal to the Supreme Court of the United States, filed on August 6, 1915, in the above entitled case is allowed this 26th day of August, 1915, upon the filing by the defendants and appellants of a bond with good and sufficient surety, in the sum of one thousand pesos (P1,000.00) Philippine Cur-ency, to prosecute the said appeal to effect and answer all damages and costs if they fail to make good their plea. And in view of the facts in this case no supersedeas bond is required.

Let a certified copy of the records, testimony, stipulations and all proceedings herein be transmitted forthwith to said Supreme Court of the United States.

Manila, P. I., August 26, 1915.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,

*Associate Justice of the Supreme Court
of the Philippine Islands.*

Service by copy admitted this 27th day of August, 1915.

ANTONIO M. OPISSO.

897 UNITED STATES OF AMERICA, ss:

To The Hongkong & Shanghai Banking Corporation, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at Washington one hundred and twenty days from the date of this citation pursuant to an appeal duly allowed and filed in the Office of the Clerk of the Supreme Court of the Philippine Islands on the 26th day of August, 1915, in a cause wherein The Hongkong & Shanghai Banking Corporation, Plaintiff and appellee and you are defendants and appellants, to show cause, if any there be, why the decree rendered against said defendants and appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United —, this 26th day of August, 1915.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

Service by copy admitted this 26th day of August, 1915.

GILBERT, COHN & FISHER,
Attorneys for Appellee.

898 Supreme Court, Philippine Islands, Clerk's Office. Received
Dec. 9, 1915, 10:34 a. m.

R.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

THE HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff
and Appellee,

versus

ALDECOA AND COMPANY, in Liquidation, et al., Defendants and Ap-
pellants.

Now come the defendants and appellants in the above entitled case and respectfully state:

That on the 26 of August, 1915, a summons was issued to the parties in this case to appear before the Supreme Court of the United States of America, One hundred and twenty days from the date of said citation;

That on the same day another order was issued by this Court directing that a certified copy of the record, testimony, stipulations,

and all proceedings in this case be transmitted to said Supreme Court of the United States;

That due to the fact the volume of the record to be translated is unusually large, it has been impossible to finish the translation and examination of the whole record in this case within the time specified by this Court so as to have it before the Supreme Court of the United States on or before the return date of said citation;

Wherefore, appellants respectfully ask this Hon. Supreme Court to grant an extension of time within which to finish the translation and prepare the transcript of the record and to issue a new summons in this case.

Manila, December 9, 1915.

ANTONIO M. OPISSO,
Attorney for Defendants and Appellants,
Plaza Moraga No. 20, Manila, P. I.

Se envíe copia de este escrito a los tres Gilbert, Cohn y Fisher.

ANTONIO M. OPISSO.

900 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and
Appellee,
versus

ALDECOA & Co., in Liquidation; JOAQUIN IBAÑEZ DE ALDECOA Y Palet, Zoilo Ibañez de Aldecoa y Palet, Cecilia Ibañez de Aldecoa y Palet, and Doña Isabel Palet de Gabarro, Defendants and Appellants; William Urquhart, Intervenor and Appellant.

Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, it is ordered that the time for docketing the transcript of the above-entitled cause in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., be and the same is hereby enlarged so that the same shall not expire before the 1st day of March, 1916.

Manila, December 13, 1915.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
Associate Justice of the Supreme Court
of the Philippine Islands.

Copy furnished to Messrs. A. M. Opisso and Gilbert, Cohn & Fisher.

901 Supreme Court, Philippine Islands, Clerk's Office. Received
Jan. 20, 1916, 11:25 a. m.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

HONGKONG AND SHANGHAI BANKING CORPORATION, Plaintiff and
Appellee,
versus
ALDECOA & COMPANY et al., Defendant- and- Appellant-.

The undersigned attorneys for both parties appellant- and appellee hereby request the Honorable Court that inasmuch as the revision of the transcript of the record in the above entitled case cannot be finished in time to have the same in the hands of the Clerk of the Supreme Court of the United States, the return date for the summons in the appeal of the above entitled case be extended to the first day of April, 1916.

Manila, January 19, 1916.

Respectfully submitted.

GILBERT, COHN & FISHER,
p. p. F. C. FISHER,
Attorneys for the Plaintiff and Appellee.
ANTONIO M. OPISSO,
Attorneys for the Defendant- and Appellant-.

902 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and
Appellee,
versus
ALDECOA & COMPANY, in Liquidation, et al., Defendants and
Appellants.

Nunc Pro Tunc Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, it is ordered that the time for docketing the transcript of the above-entitled cause in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., be and the same is hereby enlarged so that the same shall not expire before the 1st day of April, 1916.

Baguio, as of January 20, 1916.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

903 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and
Appellee,
vs.

ALDECOA Y CIA., en Liquidacion, et al., Defendants and Appellants.

Now come the defendants and appellants in the above entitled case Isabel Palet y Gabarro, Joaquin and Zoilo Ibanez de Aldecoa, and respectfully state:

That on the 13th day of December 1915, they obtained from this Court an extension of time up to, and including March 1st, 1916, wherein to make their appearance and lodge their appeal in the office of the Clerk of the United States Supreme Court, together with the transcript of the record of this case.

That pursuant to the order of this Court, these defendants and appellants on the 23 day of February, 1916, filed with the Clerk of this Court all papers necessary in this appeal, and the transcript of the record in the above entitled case together with a statement from the attorney and counsel of the plaintiff and *appellant* that he had found the same (that is to say, the translation thereof) correct, and asked said Clerk to examine said papers and the transcript of the record and certify to the correctness thereof, in due time as to have said transcript of the record and other papers pertaining to

904 this appeal at the office of the Clerk of the Supreme Court of the United States on the date fixed by the order of this Court.

That several days afterwards, when the undersigned counsel for defendants and appellants came to this Court to inquire from the Clerk if the transcript of the record had been certified, said Clerk informed him that he had not been able to attend to that matter due to the great amount of work then on his hands it being the closing season of the sessions of this Court, but that Counsel, having lodged all papers in due time, he, the said Clerk would lay the matter personally before this Court and have the same fix another date for the return of the summons.

That only on this date the Clerk has found time to complete the revision of the long and bulky record of this case and the transcript thereof, and is about to certify to the correctness thereof, and the undersigned counsel having also learned from said Clerk that due to the vacation of this Court, and to the fact that the Hon. Justice who has taken cognizance of this appeal has been in Baguio, said

Clerk has not been able to take up personally the matter of the extension of the time for the return day and the lodging of the appeal papers and transcript of the record at the office of the Clerk of the Supreme Court of the United States,—there having been no laches on the part of this counsel, having done all in his power and all that was within his province to have the record of the case lodged in due time at the office of the Clerk of the Supreme Court of the United States,—the undersigned counsel on behalf of the defendants and appellants Isabel Palet y Gabarro Joaquin and Zoilo Ibañez de Aldecoa.

905 Respectfully prays that this Court shall set the 30th day of July, A. D. 1916, for the true date of the return of the summons and the lodging of the transcript of the record of the above entitled case in the office of the Clerk of the Supreme Court of the United States, the reason for the fixing the above date being that it is the reasonable earliest date therefor, a small margin being left for any possible delay in the mails.

Respectfully submitted,

ANTONIO M. OPISSO,
Counsel for Defendants and Appellants.

906 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8437.

THE HONGKONG & SHANGHAI BANKING CORPORATION, Plaintiff and Appellee,

versus

ALDECOA & COMPANY, in Liquidation, et al., Defendants and Appellants.

Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, and that the appellants have not been guilty of laches in lodging the transcript of the record with the Clerk of this Court to be certified, it is ordered that the time for docketing the transcript of the above-entitled case in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., be and the same is hereby enlarged so that the same shall not expire before the 30th day of July, 1916.

Manila, P. I., June 13, 1916.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
Associate Justice Supreme Court,
Acting in Vacation.

907 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 906 typewritten pages (Parts 1, 2 and 3) contain a true and correct translation and transcript of the record and proceedings in the Court of First Instance of Manila and in the Supreme Court of the Philippine Islands in the case of The Hongkong & Shanghai Banking Corporation et al. vs. Aldecoa & Company in Liquidation et al., bearing No. 8437 on the docket of this Supreme Court.

In witness whereof, I hereunto set my hand and affix the official seal of the Supreme Court of the Philippine Islands this 15 day of June, 1916.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court
of the Philippine Islands.*

908 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in the case of The Hongkong & Shanghai Banking Corporation et al. vs. Aldecoa & Company in Liquidation et al., bearing No. 8437 on the docket of this Supreme Court, final judgment was rendered on July 27, 1915, and a petition for appeal to the Supreme Court of the United States was allowed on August 26, 1915.

In witness whereof, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands this 15 day of June, 1916.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court
of the Philippine Islands.*

Endorsed on cover: File No. 25,412. Philippine Islands Supreme Court. Term No. 582. Joaquin Ibañez de Aldecoa y Palet, Zoilo Ibañez de Aldecoa y Palet, and Isabel Palet y Gabarro, Appellants, vs. The Hongkong and Shanghai Banking Corporation. Filed July 18th, 1916. File No. 25,412.

Office Supreme Court, U. S.

FILED

MAY 18 1917

JAMES D. MAHER
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

JOAQUIN IBANEZ DE ALDECOA Y PALET,
ZOILO IBANEZ DE ALDECOA Y PALET
AND ISABEL PALET Y GABARRO,

Appellants,

v.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,

Appellee.

No. 582.

ZOILO IBANEZ DE ALDECOA Y PALET AND
JOAQUIN ALDECOA Y PALET,

Appellants,

v.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,

Appellee.

No. 581.

MOTIONS TO CONSOLIDATE.

The appellee in the two above entitled causes moves the Court to order that they be consolidated for all purposes relating to the appeals therein pending, and to require appellants to brief and argue the said causes together, if briefs are filed or argument is made on their behalf.

The grounds of this motion are that both of said cases turn upon the validity and construction of a certain deed of mortgage (Exhibit A, p. 4 of Rec. of case 581; Exhibit A, p. 7 of Rec. of case 582) executed in favor of appellee by appellants February 23, 1906. Before the mortgage matured the appellants Joaquin Aldecoa and Zoilo Aldecoa

brought an action in the Court of First Instance of Manila to have the mortgage annulled as to them. This suit was still pending when the obligation secured by the mortgage fell due. Appellee, as plaintiff, at once instituted proceedings for its enforcement by foreclosure. (Rec. 582, p. 1.). Defendants appealed the foreclosure case to the Supreme Court of the Philippine Islands, and decisions were rendered on the same date by the latter court in each of the cases. (Rec. 581, p. 156; Rec. 582, p. 1). Appeals were taken from the decision of the Philippine Supreme Court in the first case by Zoilo and Joaquin Aldecoa and in the second by them and by their mother, Isabel Palet y Gabarro. The issues of law and fact in each case are so closely related that to brief them separately would entail much needless repetition.

Respectfully submitted,

F. C. FISHER,
Counsel for Appellee.

WASHINGTON, D. C., May 12, 1917.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

JOAQUIN IBANEZ DE ALDECOA Y PALET,
ZOILO IBANEZ DE ALDECOA Y PALET
AND ISABEL PALET Y GABARRO,
Appellants,

v.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,

Appellee.

No. 582.

ZOILO IBANEZ DE ALDECOA Y PALET AND
JOAQUIN ALDECOA Y PALET,

Appellants,

v.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,

Appellee.

No. 581.

NOTICE OF MOTION.

To

ANTONIO OPISSO, Esquire,

*Counsel for Joaquin Aldecoa, Zoilo
Aldecoa and Isabel Palet, Appellants
in the above-entitled causes.*

Please take notice that on the 21st day of May, 1917,
or as soon thereafter as counsel may be heard, I shall
submit to the Supreme Court of the United States, at its
Court room in the City of Washington, a written motion

to consolidate the above causes, a copy of which motion is hereby served upon you, at which time and place you may appear, if you see fit.

F. C. FISHER,
Counsel for Appellee.

WASHINGTON, D. C., May 12, 1917.

I hereby acknowledge receipt and due service of the foregoing notice and of a copy of the motion mentioned therein, this **14** day of May, 1917, and I consent to the granting of the said motion.

WASHINGTON, D. C., May **14**, 1917.

(sgd.) **Antonio Opisso**

Counsel for Appellants.

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IN THE
SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1917.

(25,411.)

No. 230.

ZOILO IBAÑEZ DE ALDECOA Y PALET JOAQUIN
IBAÑEZ DE ALDECOA Y PALET, APPELLANTS,

vs.

THE HONG KONG AND SHANGHAI BANKING
CORPORATION, APPELLEE,

and

(25,412.)

No. 231.

JOAQUIN IBAÑEZ DE ALDECOA Y PALET ZOILO
IBAÑEZ DE ALDECOA Y PALET AND ISABEL
PALET Y GABARRO, APPELLANTS,

vs.

THE HONG KONG AND SHANGHAI BANKING
CORPORATION, APPELLEE,

AN APPEAL FROM TWO DECISIONS OF THE SUPREME COURT
OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE APPELLANTS.

Closely related as these cases are, and having been consolidated by order of this honorable Court, upon motion made by the appellee to which appellants have acquiesced

and consented, it is advisable, however, to make a separate statement of each case without prejudice of briefing them together when we enter into the statement of facts and argument on the points raised by these appellants respectively and submitted hereby to the decision of this honorable Court.

Statement of Case No. 230.

This action was commenced by Zoilo Ibañez de Aldecoa and by Joaquin Ibañez de Aldecoa as plaintiffs, against the Hong Kong and Shanghai Banking Corporation, Aldecoa and Company in liquidation, and Isabel Palet y Gabarro, as defendants, for the cancellation of a certain deed of mortgage executed by said plaintiffs together with the defendants, Aldecoa and Company in liquidation, and Isabel Palet y Gabarro in favor of the other defendant, the Hong Kong and Shanghai Banking Corporation, to secure the exact compliance on the part of said Aldecoa and Company with all the obligations contracted in favor of said Hong Kong and Shanghai Banking Corporation by virtue of a certain credit in current account opened by said bank in favor of said company. The original complaint was filed in the Court of First Instance of the city of Manila on the 25th day of January, 1908 (Rec., No. 230, pp. 1-3), which was superseded by an amended complaint (Rec. No. 230, pp. 43-47) filed on the 17th day of November, 1908.

The grounds relied upon by the plaintiffs in support of their demand shall be given in detail when we establish the issues raised by each of the parties in this case. The complaint after being demurred to unsuccessfully by the Hong Kong and Shanghai Banking Corporation was answered by the latter with the general denial of each and every one of the facts alleged by plaintiffs (Rec. No. 230, p. 52). The defendant, Isabel Palet answered admitting all the facts alleged by the plaintiffs, and joined them in the petition to have the mortgage deed cancelled and declared null and void (Rec. No. 230, pp. 38-43, 49). Aldecoa and Company

also filed an answer to the original complaint (Rec. No. 230, pp. 25-27), and to the first amended complaint (Rec. No. 230, p. 52), but no answer to the second amended complaint, and in fact only took a passive part thereafter in this case, acquiescing to the first decision rendered by the Court of First Instance of the City of Manila in this case.

The case was tried before the Honorable A. S. Crossfield, one of the judges of the Court of First Instance of the City of Manila, who, on March 28, 1910, rendered a decision declaring the mortgage in question to be null and void as to these plaintiffs, and decreed the cancellation of its registration (Rec. No. 230, pp. 92-94).

The defendant bank moved for a new trial (Rec. No. 230, p. 96), on the ground of newly discovered evidence, and this motion was opposed by counsel for the plaintiffs who alleged under oath:

1st. That the Hong Kong Bank and its attorneys had full knowledge of the existence of the alleged newly discovered evidence for the reason that said Hong Kong Bank had been one of the parties executing the deed which constituted said newly discovered evidence.

2d. That the defendant, the Hong Kong Bank, and its attorneys had made use of such newly discovered evidence prior to the trial of this case in other cases therein enumerated.

3d. That the evidence offered as new evidence was unnecessary and could not be given under the general denial of defendant, the Hong Kong Bank.

4th. That the recitals of said documents could in no manner change the issues of the case.

5th. That the document in question was null and void (Rec. No. 230, pp. 103-104).

The motion for a new trial was, however, granted by the trial court in what it might affect plaintiff Joaquín Ibañez de Aldecoa, and after rehearing, the trial court on January 27, 1911, rendered judgment dismissing the complaint insofar as the plaintiff Joaquín Ibañez de Aldecoa was concerned, and ordering the mortgage contract declared null and void and decreeing the cancellation of the registry thereof as to the plaintiff Zoilo Ibañez de Aldecoa (Rec. No. 230, pp. 112-115). Motions for a new trial were unsuccessfully made by the defendant the Hong Kong Bank, and the plaintiff Joaquín Ibañez de Aldecoa, and the case was appealed to the Supreme Court of the Philippine Islands by both the defendant bank and the plaintiff Joaquín Ibañez de Aldecoa (Bill of Exceptions, Rec. No. 230, pp. 120-154).

The errors alleged by Joaquín Ibañez de Aldecoa in his appeal were as follows (Rec. No. 230, p. 155) :

1st. The court erred in granting the defendant, the Hong Kong and Shanghai Banking Corporation, the new trial asked for on April 27, 1910.

2d. The court erred in finding that the plaintiff Joaquín Ibañez de Aldecoa, on June 13, 1907, ratified the deed of mortgage executed on February 23, 1906.

3d. The court erred in dismissing the complaint insofar as this plaintiff, Joaquín Ibañez de Aldecoa, is concerned.

A written stipulation in regard to certain facts was made by the parties after the respective briefs for appellant and appellee were filed (Rec. No. 230, p. 155). The case was argued before the Supreme Court of the Philippine Islands on the 19th day of February, 1912, and on the 14th day of January, 1914, was submitted once more without argument to the decision of the same court. On March 23, 1915, the Supreme Court of the Philippine Islands rendered a decision in this case, holding that the mortgage deed sought to be

cancelled by these plaintiffs was valid and constituted a binding obligation upon each of them, thus reversing the decision of the lower court as to the plaintiff Zoilo Ibañez de Aldecoa and affirming it as to the plaintiff Joaquin Ibañez de Aldecoa (Rec. No. 230 pp. 156-171). Against this decision of the Supreme Court of the Philippine Islands these plaintiffs duly excepted and moved for a reconsideration, which was denied (Rec. No. 230, pp. 173-175). After duly excepting to such a ruling of the court, these plaintiffs have appealed this case to this honorable Court.

Statement of Case No. 231.

Two months after the foregoing case had been decided by the Court of First Instance of the City of Manila, to wit, on the 31st day of January, 1911, the Hong Kong and Shanghai Banking Corporation, as plaintiff, filed a complaint in the same court against all the mortgagors who had signed the mortgage deed, which by the former action was sought to be cancelled, including Joaquin and Zoilo Ibañez de Aldecoa, for the foreclosure of the mortgage on the ground that the obligation secured by the same had matured and was still unpaid (Rec. No. 231, p. 1). The defendants named were Aldecoa and Company in liquidation, Isabel Palet y Gabarro, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, Alejandro Macleod, and William Urquhart, as liquidator of Aldecoa and Company. This original complaint was superseded by an amended complaint (Rec. No. 231, p. 98), to which amended answers were filed severally by Isabel Palet (Rec. No. 231, p. 143), and jointly by Joaquin, Zoilo, and Cecilia Ibañez de Aldecoa (Rec. No. 231, p. 145). Aldecoa and Company in liquidation stood by its original answer (Rec. No. 231, p. 60). The substance of the allegations of each of these defendants in their answers was as follows:

The defendant Aldecoa and Company interposed a gen-

eral denial and counter-claimed for damages alleged to have been caused to them by plaintiff by inducing certain of the customers of defendant firm to discontinue business relations with them, and for an accounting of the proceeds of certain collections alleged to have been made by plaintiff bank under authority from the said defendant, Aldecoa and Company.

The defendant Isabel Palet y Gabarro interposed a general denial and a special defense in which she alleged that she had been prejudiced by the failure of the plaintiff bank to realize upon certain credits owing to Aldecoa and Company which she alleged to have been assigned by Aldecoa and Company to the plaintiff corporation and which the latter had failed to collect and apply to the discharge of its credit against Aldecoa and Company.

The defendants, Joaquin, Zoilo, and Cecilia Ibañez de Aldecoa made a general denial and pleaded as a special defense:

(a) That they had been relieved from their liability as partners of Aldecoa by a judgment rendered in the Court of First Instance of the City of Manila, which judgment declared them not to be partners of Aldecoa and Company, and had become final.

(b) That in regard to the defendants Joaquin and Zoilo Ibañez de Aldecoa, these two defendants were minors at the time the mortgage deed was executed and there was no consideration for the execution thereof, and that there was another suit pending between the plaintiff and these defendants in which the validity of the mortgages set out in plaintiff's complaint was drawn in question, insofar as it affected the defendants.

(c) That plaintiff had failed to collect certain credits said to have been assigned to it by Aldecoa and Company for collection and application to the discharge of the indebtedness

sued upon, which credits would have been sufficient to discharge the said indebtedness had they been collected.

The defendants, Joaquin, Zoilo, and Cecilia Ibañez de Aldecoa, also filed a cross complaint (Rec. No. 231, p. 140), in which they alleged that they were creditors of Aldecoa and Company in the sum of 70,000 pesos as a balance due upon a certain judgment recovered by them against the said firm of Aldecoa and Company; that this claim was entitled to preference over that sued upon by plaintiff, and that the mortgages executed by the defendant Aldecoa and Company in favor of the plaintiff corporation were void as to these cross-complainants. To this cross-complaint the bank filed an answer making a general denial.

Mr. William Urquhart, the liquidator of Aldecoa and Company, as to whom the complaint had been dismissed, filed a complaint in intervention (Rec. No. 231, p. 7), claiming to be entitled to payment of certain moneys due him from Aldecoa and Company as a preferred credit with precedence over the mortgage obligations in favor of the bank. As to this party we must say that the trial court found that he had no legal interest in the matter in litigation between the plaintiffs and defendants, and his cross-complaint was dismissed. He appealed from this judgment to the Supreme Court of the Philippine Islands but it was affirmed and Mr. Urquhart has abided by that decision.

The foreclosure suit No. 231 was tried before the Honorable S. Lobingier, one of the judges of the Court of First Instance of the City of Manila, on the 22d day of January, 1912 (Rec. No. 231, p. 149), and on August 10, 1912, judgment was rendered by Judge Lobingier in favor of the plaintiff bank and against the defendant Aldecoa and Company in liquidation, for the sum of 344,924.23 pesos together with interest thereon at the rate of 7 per cent per annum, semi-annually compounded, which sum said defendant was ordered to pay on or before the first day of the next term of court, and in default of said payment it was decreed that

the mortgage executed to said plaintiff by said defendant and by the other defendants, Isabel Palet, Joaquin, and Zoilo Ibañez de Aldecoa be foreclosed by the sale of the mortgaged property to satisfy said sum, interest and costs. It was further decreed that in the event that the proceeds of the sale should be insufficient to pay the amount found due to the plaintiff, with interest and costs, the said sum should be paid by the defendants Aldecoa and Company in liquidation, Isabel Palet, Joaquin, Zoilo, and Cecilia Ibañez de Aldecoa jointly and severally, subject to the condition that the execution should not issue against these defendants except by way of foreclosure of the property specifically mortgaged by them, and till the property of Aldecoa and Company should first be exhausted (Rec. No. 231, p. 390). From this judgment the defendant, Isabel Palet, Joaquin Ibañez de Aldecoa, Zoilo Ibañez de Aldecoa, and Cecilia Ibañez de Aldecoa, appealed to the Supreme Court of the Philippine Islands. In their appeal these defendants urged respectively the following errors (Rec. No. 231, pp. 392-393):

Errors alleged by Isabel Palet:

1st. That the lower court failed to hold that the obligations of said Isabel Palet as surety had been extinguished.

2d. That the lower court erred in refusing to order for the benefit of said appellant that the property of Aldecoa and Company should be exhausted before the plaintiff firm should be entitled to have resort to the property of this defendant and appellant for the satisfaction of its judgment.

Errors alleged by Joaquin and Zoilo Ibañez de Aldecoa:

1st. The court erred in not sustaining the plea of *lis pendens* with respect to the validity of the mortgage claimed by the plaintiff, which plea was set up as a special defense by these defendants and in taking jurisdiction of the case, and in

deciding therein a matter already submitted for adjudication and not yet finally disposed of.

2d. The court erred in not sustaining the plea of *res adjudicata*, set up as a special defense by these defendants with respect to the contention of the plaintiff that these defendants were industrial and general partners of the firm of Aldecoa and Company.

3d. The court erred in holding that the defendants Joaquin and Zoilo Ibañez de Aldecoa were general partners of Aldecoa and Company and in rendering judgment against them subsidiarily for the payment of the amount claimed in the complaint.

Cecilia Ibañez de Aldecoa also filed her assignment of errors, which were the same as the 2d and 3d assignments of error of Joaquin and Zoilo Ibañez de Aldecoa, and her contentions were fully sustained by the decision of the Supreme Court of the Philippine Islands and acquiesced in by the plaintiff bank.

On the 14th day of January, 1914, the case was submitted to the Supreme Court of the Philippine Islands and on the 23d day of March, 1915, said Supreme Court rendered two separate decisions in this case (Rec. No. 231, pp. 393, 399). The first of these decisions sustained the contention of the appellants, Joaquin, Zoilo, and Cecilia Ibañez de Aldecoa, to the effect that they were not and could not be partners of Aldecoa and Company, and that although their names appeared in the contract of partnership they had been included there against the law, thus reversing the decision of the lower court as to this point. Against that decision these appellants have nothing to say, the same being in accordance with law. The second decision, however, sustained the judgment of the lower court (Rec. No. 231, p. 399), against Aldecoa and Company in liquidation and as to the decree

of foreclosure of the mortgage executed to the plaintiff bank by Isabel Palet, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa. It also sustained the judgment against Isabel Palet for any deficiency which might result after the sale of the mortgaged property. Against this decision the defendants, Isabel Palet, Joaquin Ibañez de Aldecoa, and Zoilo Ibañez de Aldecoa, have appealed to this honorable Court.

The Issues in These Cases.

Case No. 230.

The issue in this case, which is in fact the main issue in this appeal, rests chiefly upon the allegations made by the appellants, Joaquin and Zoilo Ibañez de Aldecoa, in their amended complaint (Rec. No. 230, pp. 43-47) to ask for the cancellation and annulment of the mortgage deed executed on the 23d of February, 1906, in favor of the Hong Kong and Shanghai Banking Corporation. Appellants alleged that said deed of mortgage was null and void because they were minors at the time the same was executed; that although they had been emancipated by their mother, Isabel Palet, said emancipation was not legal or valid under the laws in force in the Philippine Islands; that they had no guardian of property at the time the mortgage was executed and, in fact, they concurred and took part in the execution thereof without the assistance of any guardian or any other valid or legal representation; that they were deceitfully induced by the manager of Aldecoa and Company and by the manager of the Hong Kong and Shanghai Banking Corporation, each by himself and in collusion with the other, to execute said document and, finally, that there was no consideration *whatever* for the execution thereof, because they derived no benefit directly or indirectly from the execution of the mortgage deed. Furthermore, they alleged that the consent which they gave to said mortgage deed was given

under the erroneous belief that they were members of Aldecoa and Company, and that said consent was null and void, and the authority and consent which, in said document, their mother, Isabel Palet y Gabarro is said to give them through her attorney-in-fact, Don Fernando Zobel, was an unlawful act in violation of the laws in force in the Philippine Islands. These allegations are met by the Hong Kong and Shanghai Banking Corporation with a general denial and the said bank contended in its first answer to the first amended complaint (Rec. No. 230, p. 25), which answer, however, was superseded by a general answer containing a general denial, where its contention is not included and made part of said amended answer (Rec. No. 230, p. 52), that at the time of the execution of the mortgage in question, the appellants, Joaquin and Zoilo Ibañez de Aldecoa, had been lawfully emancipated by their mother, Isabel Palet, and were therefore competent to execute the mortgage in question, and that the mortgage was in fact executed by them without any improper influence being brought to bear upon them, and with their full knowledge of the circumstances.

Case No. 231.

The issue in this case between the bank and the appellants, Joaquin and Zoilo Ibañez de Aldecoa, is:

1st. That these appellants were minors at the time they executed the mortgage, the emancipation by their mother, Isabel Palet, being void.

2d. The pendency of their suit to cancel the mortgage was a bar to the subsequent suit for foreclosure.

3d. The lack of consideration for the mortgage.

As to the appellant Isabel Palet she contends that she has been relieved from her liabilities because there has been no

breach of the conditions of the contract of February 23, 1906; that the bank failed to apply to the satisfaction of the debt certain credits and funds given to and accepted by it for that purpose; and that the contract of suretyship has been novated and by said novation made without her knowledge or consent she has been released.

Summing up then, the issues of law in these cases may be defined as follows:

As to the appellants Joaquin and Zoilo Ibañez de Aldecoa:

(a) Were they minors at the time the mortgage was executed?

(b) Could their mother, Isabel Palet, emancipate them in the Philippine Islands, and was that emancipation valid under the laws in force therein?

(c) Did their mother exercise the right of parental authority over her minor children after the promulgation of the Code of Civil Procedure in the Philippine Islands?

(d) Granting for the purposes of the argument that Isabel Palet had parental authority over the property of her minor children, even after the promulgation of the Code of Civil Procedure in the Philippine Islands, could she emancipate them under the Civil Code after the Code of Civil Procedure and Act 136 went into effect?

(e) Even granting for the purposes of the argument that Isabel Palet, the mother of these appellants, could emancipate them, was that emancipation as given by her in accordance with the laws existing in the Philippine Islands?

(f) Could the mother,* after having emancipated her children, have given them her consent without the authority of

the court to encumber their property in the Philippine Islands?

(g) Was there any valid or lawful consent given by the mother of these appellants to their encumbering their real estate?

(h) Did any one of these appellants ratify the execution of the mortgage after attaining their majority?

(i) Was the plea of *lis pendens* well taken?

(j) Was there any valid or lawful consideration for the mortgage?

As to the appellant Isabel Palet:

(a) Has the obligation of this appellant been extinguished by reason of the bank's failure to apply to Aldecoa and Company's credit certain funds, property, and credits given to it for said purpose?

(b) Has the mortgage on her property as surety of Aldecoa and Company been discharged by novation of the contract without her consent?

The issues of fact can be reduced to the following:

Were the appellants, Joaquín and Zoilo Ibañez de Aldecoa, deceitfully induced by misrepresentations, and were they unduly influenced to execute the mortgage contract?

Was there any breach of the conditions of the contract of February 23, 1906?

Statement of Facts.

I.

The appellant Isabel Palet y Gabarro is the widow of Zoilo Ibañez de Aldecoa y Palet, and the appellants Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa are her legitimate children, both of them having been born in the Philippine Islands, on the 27th of March, 1884, and 4th of July, 1885, respectively. Both Don Zoilo Ibañez de Aldecoa, Senior, and his widow, Isabel Palet y Gabarro, were natives of Spain. Don Zoilo Ibañez de Aldecoa, Senior, being a resident of and domiciled in the Philippine Islands, died in the city of Manila on the 4th day of October, 1895.

(Stipulation, Rec. No. 230, p. 155.)

II.

Don Zoilo Ibañez de Aldecoa, Senior, was at the time of his death the principal partner of the firm of Aldecoa and Company, engaged in business in the Philippine Islands. When his death occurred, his widow, Isabel Palet, organized a new firm, together with the surviving partners, which continued the business of the one just dissolved with the death of her husband.

This firm ceased to exist on the 31st day of December, 1896. On this date a new firm was organized, under the same name of Aldecoa and Company, by a public instrument executed on that date before the notary public of the city of Manila, Don Enrique Barrera y Caldes (Ex. H, Rec. No. 231, p. 83). In this new company the widow, Isabel Palet y Gabarro, was the principal capitalist partner of the firm, her share being ₱200,000 as against ₱100,000 of one of the partners, ₱25,000 of another and ₱12,500 of each of the remaining four capitalist partners (Rec. No. 231, p. 189).

III.

Isabel Palet y Gabarro, at the time the new firm of Aldecoa and Company was organized, exercised the right of parental authority (*patria protestas*) over her minor children, Joaquin, Zoilo, and Cecilia, and pretending to have power to contract in the name and behalf of her three named children (Defendants' Ex. 5, Rec. 231, p. 280), then aged 12, 11, and 9 years, respectively, without securing judicial approval to enter into the contract of partnership on behalf of her children (Findings of the Supreme Court, Rec. 231, p. 396), made them industrial partners in said firm of Aldecoa and Company. These industrial partners had no right to vote or to be heard in the meetings of the partnership (Rec. No. 231, p. 193), and together with their mother, Isabel Palet, were excused from attending to office (Rec. No. 231, p. 194), the use of the firm name being given severally and only to three of the other capitalist partners and to one of the other industrial partners (Rec. No. 231, p. 188). Later Mr. A. S. Macleod was on the 28th day of February, 1898, admitted into the partnership, with power to use and sign the firm's name (Rec. No. 231, p. 197).

IV.

On or about the year 1897, Isabel Palet y Gabarro, widow of Aldecoa, being a resident of and domiciled in the Philippine Islands, by reason of her poor health, left temporarily the Philippine Islands, together with her minor children Joaquin, Zoilo, and Cecilia, and was absent from said Islands until the year 1902, when she returned to the same and preserved her domicile therein until the year 1906.

(Stipulation, Rec. No. 230, pp. 155-156.)

V.

On the 31st day of July, 1903, Isabel Palet y Gabarro, believing herself a mother with full parental authority over her minor children, and in the belief that articles 154-173 and articles 314-319 of the Civil Code were at that time in full force and effect in the Philippine Islands, and believing that it was an act permitted by the laws of the Philippine Islands (Rec. No. 230, p. 39) emancipated each of her children, Joaquin and Zoilo, by virtue of a document purporting to be an "act of emancipation," which reads as follows:

"In the city of Manila, Philippine Islands, this thirty-first day of July, nineteen hundred and three, before me, Enrique Barrera y Caldes, notary public of the same, personally appeared Doña Isabel Palet y Gabarro, widow of the Don Zoilo Ibañez de Aldecoa y Aguirre, property holder, of lawful age, and resident of this city, without exhibiting any cedula on account of being exempt therefrom by reason of her sex:

"And Don Joaquin Ibañez de Aldecoa y Palet, without any special profession, over eighteen years of age, and resident of the city, with cedula number one hundred sixty-one thousand nine hundred and seventy-eight, issued by the Collector of Internal Revenue of this city for the present year.

"And having, as I believe they have, legal capacity to execute this instrument, Doña Isabel Palet y Gabarro states:

"That acknowledging in her son, Don Joaquin Ibañez de Aldecoa, the faculty to rule his person and manage his property, renounces for herself the parental authority (*patria protestad*), which she heretofore had over his person and property, and by virtue hereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire, just as if he was of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents either pub-

lic or private, which may be necessary for the above-named purposes.

"Don Joaquin Ibañez de Aldecoa y Palet, on his turn states: That he accepts the emancipation granted him by his mother by virtue of the present document, being grateful to her for the benefit she thus confers on him.

"In witness whereof, the above-named parties ratify their statements before me, said parties being personally known to me, to be the persons above named, and swear that this is an act of their free will and deed, in the presence of the witnesses Don Candido del Rosario y Espiritu and Don Manuel Sansano y Arciaga, both clerks, of lawful age and residents of this city, who sign with them this document, which I authorize, as notary public, under my signature and the seal of my office, on the day, month, and year above mentioned; to all of which I certify.

"(Signed) ISABEL PALET,

Widow of Aldecoa.

"(Signed) JOAQUIN IBAÑEZ DE ALDECOA.

"(Signed) CANDIDO DEL ROSARIO.

"(Signed) MANUAL SANSANO.

"(Signed) ENRIQUE BARRERA Y CALDES,

"[NOTARIAL SEAL.]

Notary Public.

"My commission expires January 1, 1905."*

VI.

In the year 1905 the firm of Aldecoa and Company, which eight years before had been organized with the capital of ₧375,000, and which, in the year 1901, was a creditor of the Hong Kong and Shanghai Banking Corporation (Rec. No. 230, p. 162), was deeply in debt to the bank to about ₧500,000 (Rec. No. 230, p. 81), with the banking corporation insistently pressing for immediate payment unless ample security was given therefor, insisting that Isabel Palet and

* The act of emancipation of the appellant Zoilo Aldecoa is expressed in identical terms, with the exception of the difference in names.

her children Zoilo, Joaquin, and Cecilia, as partners of the firm mortgage their private property in the Philippine Islands (Ex. J, Rec. No. 230, p. 93; Ex. D-3, *Ibid.*, p. 87). To this request of the bank Isabel Palet refused to consent, not only for herself, but also for her children, and so was the bank notified (Ex. D-5, Rec. No. 230, p. 88), to which the bank replied, asking to "lay before Mrs. Aldecoa the serious consequences that might incur to the firm should the directors of the bank decide to call upon you (the firm) for the early payment of the overdraft" (Ex. D-6, Rec. No. 230, p. 89).

VII.

The last quoted letter, together with others in which the bank threatened to bring immediate suit against the firm (Ex. D-8, D-9, D-10, Rec. No. 230, pp. 90-92), accompanying a letter from A. S. Macleod to her (Ex. J, Rec. No. 230, p. 83), finally induced Mrs. Aldecoa to yield, and as a consequence thereof, said Isabel Palet y Gabarro on the 13th day of December, 1905, executed a document before a notary public of the city of Madrid, whereby she granted Mr. Fernando Zobel y de Ayala power to execute in her name and "and jointly with her sons Don Zoilo and Don Joaquin Ibañez de Aldecoa, who are also members of said firm (Aldecoa and Company) the necessary public instrument mortgaging in favor of the Hong Kong and Shanghai Banking Corporation, also of Manila, Philippine Islands, all the real property which the exponent and her two sons own in the Philippine Islands to secure to the bank, etc." and "to consent to the other conditions which may be deemed proper and to see that said mortgage deed shall contain whatever other requisites and circumstances be necessary for its validity and efficacy; the exponent granting also in favor of her children Don Zoilo and Don Joaquin Ibañez de Aldecoa *in case it is deemed necessary* the proper authority or permission to mortgage their own property by said instrument for

said purpose" (Rec. No. 230, Ex. C, p. 29). In the meantime the manager of the firm of Aldecoa and Company, together with the manager of the Hong Kong and Shanghai Banking Corporation had been insisting on the appellants, Joaquín and Zoilo Ibañez de Aldecoa to execute a mortgage of their property in favor of the bank, to which they resisted, until Don Fernando Zobel, claiming to have the consent of their mother and being their mother's attorney-in-fact, ordered them to sign. (Rec. No. 230, p. 37; testimony of Joaquín Ibañez de Aldecoa, pp. 32-38, *Ibid.*).

VIII.

Consequently, on the 23d day of February, 1906, Aldecoa and Company and the appellants Isabel Palet, Joaquín Aldecoa, and Zoilo Aldecoa—the last two "assisted by and with the consent of their mother by virtue of the letters of attorney granted to Don Fernando Zobel y de Ayala" (Rec. No. 230, p. 4)—executed the deed of credit which appears at page 4, of Record No. 230, which purported to be an agreement with the plaintiff bank by which the latter granted to Aldecoa and Company a credit in account current up to the sum of ₧475,000 upon the terms and conditions set forth therein.

IX.

On the 23d day of March, 1906, the Hong Kong and Shanghai Banking Corporation and appellants herein, together with Aldecoa and Company, executed an additional contract supplemental to the contract of February 23, 1906, above referred to, for the purpose of:

(a) Increasing the security given the appellee bank for the performance of the obligations undertaken in its favor by Aldecoa and Company, pursuant to the terms of the contract of February 23, 1906.

(b) Correcting an error in the description of certain property mortgaged to the plaintiff bank by said instrument of February 23, 1906.

(c) To determine the amount for which each of the mortgaged properties should be liable, said contract containing a provision which reads as follows:

"All the contracting parties herein declare that this document is only an addition to the said deed of February 23, 1906, of which it is made part, etc."
(Ex. B, Rec. No. 231, pp. 14-18).

X.

One of the obligations contained in the deed of credit executed on February 23, 1906, was that on or before the 31st day of December, 1906, the firm of Aldecoa and Company was to reduce the credit of ₱475,000 so that by said date, December 31, 1906, the amount of the credit should be reduced to ₱425,000, and to continue to reduce said debit balance at the rate of ₱50,000 per year so that on January 1, 1911, the credit should not exceed the sum of ₱225,000 (Ex. A, Rec. No. 231, p. 11). On the 22d day of December, 1906, the defendant, Aldecoa and Company, by public instrument executed before a notary public of the city of Manila, as an additional security for the performance of the obligation assumed by them in favor of the plaintiff corporation under the terms of the contract herein referred to as Exhibit A (Rec. No. 231, p. 7), mortgaged to the plaintiff bank the right of mortgage pertaining to said Aldecoa and Company upon certain real property mortgaged to said Aldecoa and Company by one Salustiano Zubeldia, to secure an indebtedness to that firm, said property being valued in the sum of ₱177,769.95 (Ex. C, Rec. No. 231, p. 19). On the 31st day of December, 1906, the defendant firm Aldecoa and Company went into liquidation on account of the ex-

piration of the term for which it had been organized and Mr. William Urquhart was duly elected by the partners as liquidator of the firm (Ex. D, Rec. 231, p. 244).

XI.

On the 31st day of December, 1906, on which date Aldecoa and Company went into liquidation the amount of its indebtedness to the banking corporation upon the overdraft created by the terms of the contract referred to of February 23, 1906, was ₱516,517.98 (Finding No. 27 of the Lower Court, Rec. No. 231, p. 387).

XII.

On the 16th day of January, 1907, Salustiano Zubeldia, one of the debtors of Aldecoa and Company, to whom reference has been made in paragraph X, and the manager of the Hong Kong and Shanghai Banking Corporation, executed a document (Defendants' Ex. 1, Rec. No. 231, p. 222) whereby said Zubeldia acknowledging to be indebted to Aldecoa and Company in the sum of ₱118,621.23 was allowed by the bank to pay his debt at the rate of ₱3,000 per year, beginning from the first day of January, 1907. On January 30, 1907, the defendant Aldecoa and Company, through William Urquhart its liquidator, by public instrument authorized the bank to collect from certain persons and firms named therein any and all debts owing to said Aldecoa and Company, and to apply the amounts so collected to the satisfaction, *pro tanto*, of the indebtedness of said Aldecoa and Company (Ex. G, Rec. No. 231, p. 42).

XIII.

On the 13th day of June, 1907, Aldecoa and Company, Joaquin Ibañez de Aldecoa and José Maria Ibañez de Aldecoa,

the latter alleging to be the attorney-in-fact of Isabel Palet and of Zoilo Ibañez de Aldecoa, executed a memorandum agreement in favor of the Hong Kong and Shanghai Banking Corporation, wherein for and in consideration of the bank furnishing a bond in a suit which was to be instituted by Aldecoa and Company against its former manager Alejandro S. Macleod, relative to certain shares of stock in a corporation known as the Pasay Estates Company, Limited, amounting in value to ₱160,000, said Aldecoa and Company, Joaquin Aldecoa and José Maria Ibañez de Aldecoa, in his representative capacity, agreed that the proceeds of said litigation, in the event that a decision favorable to the plaintiff was obtained, would go in their entirety to the satisfaction, *pro tanto*, of the credit which the firm of Aldecoa and Company had with the bank (Ex. V, Rec. No. 231, p. 205).

XIV.

As a result of the litigation referred to in the preceding paragraph in regard to the shares of stock of the Pasay Estates Company, Limited, said Aldecoa and Company became the owner thereof through a compromise agreement executed in Manila on the 14th day of August, 1907 (Ex. B, Rec. No. 231, p. 235), and on the 30th day of August, 1907, Mr. William Urquhart, as liquidator of the firm of Aldecoa and Company, mortgaged to the Hong Kong and Shanghai Banking Corporation said shares of the Pasay Estates Company, Limited, which were given to the mortgagee for custody and preservation, and as an additional security for the payment to the said Hong Kong and Shanghai Banking Corporation of the amount for which Aldecoa and Company might be indebted by reason of the credit granted to it (Ex. D, Rec. No. 231, p. 25).

XV.

On the 30th day of January, 1907, Aldecoa and Company, in liquidation by Mr. William Urquhart, executed an

agreement in favor of the Hong Kong and Shanghai Banking Corporation, whereby said Aldecoa and Company assigned to the Hong Kong Bank all the debts due and owing the said Aldecoa and Company to the value of ₱538,976.80 (Ex. G, Rec. No. 231, p. 42).

XVI.

On the 31st day of March, 1907, Mr. William Urquhart, as liquidator of Aldecoa and Company, mortgaged to the Hong Kong Bank the right of mortgage pertaining to said firm of Aldecoa and Company upon certain real estate mortgaged to said defendant Aldecoa and Company by one Andres Garchitorena to secure a balance of ₱20,282.19 still due to Aldecoa and Company by said Andres Garchitorena. The property thus mortgaged being over the value of ₱50,000 (Ex. E, Rec. No. 231, p. 28).

XVII.

On the 31st day of March, 1907, the defendant Aldecoa and Company, through William Urquhart, its liquidator, executed an additional security for the performance of the obligations assumed in the contract of February 23, 1906, mortgaging to the bank the rights of mortgage pertaining to said firm upon certain real property belonging to Tremoya Hermanos, who had mortgaged it to said Aldecoa and Company to secure an indebtedness to that firm of about ₱118,000, said property being valued in the sum of ₱139,300 (Ex. F, Rec. No. 231, p. 35).

XVIII.

On the 31st day of December, 1907, the balance against Aldecoa and Company as it appeared in the books of the Hong Kong Bank was ₱439,357.06; on December 31, 1908, ₱438,289.57; on December 31, 1909, ₱406,946.54; on De-

ember 31, 1910, ₱396,080.66; on December 31, 1911, ₱380,523.46; (Rec. No. 231, p. 152), and on August 10, 1912, the balance appearing in the books of the bank against Aldecoa and Company in liquidation, after crediting Aldecoa and Company with various sums of money which had been received and collected a long time before, stood at ₱344,924.23.

XIX.

In the month of September, 1908, the Court of the First Instance of the City of Manila rendered a judgment in case No. 6,088 of that court, wherein the appellants, Joaquin, Zoilo, and their sister Cecelia Ibañez de Aldecoa were plaintiffs and Aldecoa and Company and Isabel Palet were defendants, and held that the contract of partnership by which the firm Aldecoa and Company was constituted (Rec. No. 231, p. 183) was void as to said Joaquin, Zoilo, and Cecilia Ibañez de Aldecoa.

XX.

In the month of January, 1908, the appellants, Joaquin and Zoilo Ibañez de Aldecoa, instituted an action in the Court of First Instance of the City of Manila against the Hong Kong and Shanghai Banking Corporation for the purpose of obtaining a judgment annulling the document executed by them on February 23, 1906, to which the other document executed on the 23d of March, 1906, was also incorporated. (See Statement of Facts No. IX.)

XXI.

As already pointed out in the statement of the case the Court of First Instance dismissed this suit as to the appellant Joaquin Ibañez de Aldecoa and ordered the annulment of the instrument in regard to the defendant Zoilo Ibañez de Aldecoa.

Assignment of Errors.

In Case No. 230 the appellants, Joaquin and Zoilo Ibañez de Aldecoa y Palet, have alleged the following errors committed by the Supreme Court of the Philippine Islands, to wit:

I.

In not finding that the trial court erred in granting the motion for a new trial and setting aside the first judgment rendered by said trial court in this case.

II.

In failing to find that the trial court erred in finding that plaintiff Joaquin Ibañez de Aldecoa had ratified the deed of mortgage after he had attained majority.

III.

In stating that the new law of guardianship as contained in the Code of Civil Procedure promulgated in 1901, did not abrogate the right of those parents who were administering the estates of their children under the right of *patria protestad* at the time it went into effect, to subsequently emancipate their children and confer upon them capacity to contract with third persons.

IV.

In establishing that a parent exercising the *patria protestad* over the property of his minor children was substantially, although not *eo nomine*, as nearly a guardian within the meaning of that word as used in the Code of Civil Procedure, as the Civil Code guardian.

V.

In not finding that the consent given by plaintiffs' mother to the plaintiffs to encumber their property could not be given validly under the laws in force in the Philippine Islands.

VI.

In holding that the so-called deed of emancipation executed by Doña Isabel Palet in favor of plaintiffs was a public instrument within the meaning of article 316 of the Civil Code.

VII.

In not finding that the consent given by Doña Isabel Palet was null and void under the provisions of articles 164 and 165 of the Civil Code.

VIII.

In failing to find that there was no consideration for the deed of mortgage executed by the plaintiffs in favor of the Hong Kong and Shanghai Banking Corporation, but making on the contrary the following statements:

"It is urged lastly that the mortgage contract is void as to plaintiffs by reason of a lack of consideration. It is asserted that they executed the mortgage under the impression that they were partners in the firm of Aldecoa and Company when as decided by a final judgment of the Court of First Instance they were not such partners. Article 1276 of the Code provides:

" 'Statement of a false consideration in contracts shall render them void unless it be proved that they were based on another real and licit one.'

" By the same judgment which released the plaintiffs from their obligations as partners of the firm

they were declared creditors of that firm. Here was a valid and subsisting consideration for the mortgage. The creditors desired to preserve the firm intact in the hope of recovering from it in due course their total credits. It seems clear that it was the object of the mother and the plaintiff's children to thus save the business, and it matters little that the plaintiffs were creditors and not partners."

IX.

In sustaining the decision of the lower court as to the plaintiff Joaquín Ibañez de Aldecoa.

X.

In reversing the decision of the lower court as to the plaintiff Zoilo Ibañez de Aldecoa.

XI.

In declaring the mortgage deed binding upon these two plaintiffs.

XII.

In denying the motion for a new trial.

In Case No. 231, the errors alleged are as follows:

I.

In finding that the firm of Aldecoa and Company, on February 23, 1906, obtained a credit in account current up to the sum of ₧450,000.

II.

In making the following finding, to wit:

"This is especially true in the case under consideration for the reason that it was a well-known fact that Aldecoa and Company was insolvent."

III.

In not finding that the bank could not institute proceedings to foreclose the mortgages alleged to have been executed by these defendants without first having instituted proceedings, obtained judgment and exhausted all its remedies to collect and reduce to cash all the assets of Aldecoa and Company, especially in view of the following finding made by the court, to wit:

"That the bank was expressly empowered to take any action which might be necessary, judicially or extrajudicially, for the collection of these credits."

IV.

In holding that the defendants, Joaquin and Zoilo Ibañez de Aldecoa, were debtors *in solidum* with Aldecoa and Company.

V.

In making the following finding:

"If two or more persons are debtors *in solidum* of a third person, and one or more of such debtors constitute mortgages upon their real property situate in the jurisdiction of the court, the creditor, in case his obligation is not paid at maturity, may include all solidary debtors in the same suit and secure a joint and several judgment against them, as well as judgments of foreclosure upon the respective mortgages."

And applying this principle to the present case.

VI.

In finding that Urquhart, the liquidator of Aldecoa and Company, was given authority by all the sureties to authorize

the bank to give extensions to the debtors of Aldecoa and Company for the payment of their debts.

VII.

In ordering that the plaintiff corporation recover from Aldecoa and Company and Isabel Palet y Gabarro, jointly and severally, without directing for the benefit of the appellant, Isabel Palet y Gabarro, that the property of Aldecoa and Company should be exhausted before the plaintiff firm should be entitled to have recourse to the property of said Isabel Palet y Gabarro for the satisfaction of its judgment.

VIII.

In failing to hold that Isabel Palet y Gabarro's obligation as surety has been extinguished in accordance with the provisions of article 1851 of the Civil Code.

IX.

In making the following finding, to wit:

"We find nothing in the record showing either directly or indirectly that the bank has at any time granted any extension in favor of Aldecoa and Company for the performance of its obligation."

X.

In failing to find that there was no consideration for the mortgage contract executed by appellants, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa.

XI.

In not sustaining the plea of "another suit pending" with respect to the validity of the mortgages claimed by the plain-

tiff, which plea was set up as a special defense by the defendants, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, and in taking jurisdiction of the case and deciding therein a matter submitted for adjudication and not yet finally decided or disposed of; especially in view of the following finding made by the court, to wit:

“that if the final judgment in the former action is that the mortgages be annulled, such an adjudication will deny the right of the bank to foreclose the mortgage.”

XII.

In finding that the defendants and appellants, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, ratified the contract of February 23, 1906, on June 13, 1907.

XIII.

In not holding that defendants, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, are in no way liable for any part of the indebtedness of Aldecoa and Company.

XIV.

In rendering judgment against these defendants and ordering the foreclosure of a mortgage which these defendants claim is null and void.

All these errors shall be discussed under the points of law and fact involved in our argument, and inasmuch as the judgment rendered against these appellants by the Supreme Court has been based on different grounds, we beg permission of this court to discuss separately the appeals of each one of these appellants in this brief as to those points which are not common to all of them.

II.

THE APPEAL OF JOAQUIN IBANEZ DE ALDECOA
AND ZOILO IBANEZ DE ALDECOA.BRIEF OF THE ARGUMENT IN THE APPEAL OF
JOAQUIN IBANEZ DE ALDECOA AND ZOILO
IBANEZ DE ALDECOA.

CHAPTER I.

The Contract of February 23, 1906, Was Null and Void.

Point One.

Appellants, Joaquin and Zoilo Ibañez de Aldecoa, were minors at the time the contract was executed, and although their mother had executed a deed of emancipation, said deed of emancipation was null and void, because:

(1) The right of parental authority as to the property of minor children has been abolished by the Code of Civil Procedure of the Philippine Islands.

(2) Under the laws in force in the Philippine Islands on the 31st day of July, 1903, the power to emancipate, which is one of the consequences of parental authority, had been abolished.

(3) Even if the two foregoing premises be not considered, the emancipation did not take place before any officer of record, it having been executed before a person who, under the law, had no power to authorize such emancipation.

Point Two.

The court erred in stating that the new law of guardianship did not abrogate the right of parental authority which

those parents who were exercising it prior to the promulgation of the Code of Civil Procedure had over the property of their minor children.

Section 581 of the Code of Civil Procedure, which only refers to "pending guardianship proceedings," cannot refer to administration and management of the property of a minor under the right of parental authority, which is not a "pending guardianship proceeding" under either the meaning of the Civil Code or under the meaning of the Code of Civil Procedure.

Point Three.

The Hong Kong and Shanghai Banking Corporation, not being an appellant in this case, cannot bring for consideration in this appeal a question which the lower court purposely avoided discussing or making the basis for a decision of the issues in this case.

But even if this should be allowed, we submit that

Point Four.

The appellants were citizens of the Philippine Islands, and not subjects of Spain, under the authority of article IX of the Treaty of Paris, and section 4 of the act of Congress of July 1, 1902.

Point Five.

Admitting for the purposes of the argument that the appellants and their mother were subjects of Spain:

(a) The mother could not emancipate them in the Philippine Islands.

(1) Emancipation purporting to confer the right on these appellants to manage their real estate in the Philippine

Islands, cannot be granted where the laws where the property is located do not allow it. The principle of *lex rei sitae* must govern because the exclusive control of realty is an essential element of sovereignty. No other community can interfere with the method by which real property may be acquired or held or the conditions to which the enjoyment is subject.

(2) A foreign parent or guardian cannot be permitted to exercise powers not granted to a home parent or guardian.

(b) The emancipation was not made in accordance with the laws of Spain:

(1) It was not made by public instrument.

(2) It was not made before the only official who could have authorized it, viz., the Spanish Consul.

(c) The act of emancipation was not registered in the Civil Registry according to the laws of Spain.

Point Six.

Even granting for the purposes of the argument that the emancipation deed was valid, the mortgage executed by these appellants was null and void:

(a) Because, either under the laws of Spain or of the Philippine Islands, the mother of these appellants could not give them her consent to execute the mortgage, whether we consider

(1) That for the purposes of alienation or encumbrance of real estate the parental authority still subsists, or

(2) That a new relation has been created between parent and child.

If the parental authority still subsists, the law provides that the parent cannot alienate or encumber the real property of the child except for reasons of utility and necessity and after authorization from the judge of the domicile. Therefore, if the parent cannot do a thing, he cannot give his consent for the thing to be done, without fulfilling the requisites of the law. One cannot do indirectly what the law forbids him to do directly.

If a new relation springs up between parent and child after emancipation, this relation having been created after the promulgation of the Code of Civil Procedure, it must conform to the provisions thereof, and therefore the mother of these appellants had to be appointed guardian of their property, and as such guardian, ask the consent of the court for encumbering the real estate of these appellants.

(b) The consent which the mother of these appellants gave them, was null and void, because

(1) She was an interested party in the execution of the mortgage deed.

(2) There was no consent as contemplated under article 317 of the Civil Code.

(3) She could not delegate to a third party a power which was inherent only in a parent.

(c) Even if such consent could be held valid under the foregoing premises, it was given under a mistake of fact, and therefore, is null and void.

CHAPTER II.

The contract is null and void because there was no consideration, and was furthermore executed under a mistake of fact, and under undue influence and misrepresentations from the manager of Aldecoa and Company and from that of the Hong Kong and Shanghai Banking Corporation, which constitutes deceit and vitiates the consent.

Point One.

There was no consideration.

These appellants executed the contract in the belief that they were partners of Aldecoa and Company, and in order to save their property which as such partners they thought they would lose. The courts later adjudicated that they were not and could never have been partners of Aldecoa and Company. The consideration was, then, false, and therefore the contract null and void. The Supreme Court virtually admits this contention as true, at page 175 of Record No. 230.

The Supreme Court of the Philippine Islands after virtually admitting the truth of the foregoing contention, cannot surmise or allege any other consideration when it has not been proved that the contract was based on another real and licit consideration.

Point Two.

The contract was executed under a mistake of fact.

These appellants executed the contract in the belief that they were partners of Aldecoa and Company, when in fact they were not.

The law provides that consent given by error is void, and that error as to those conditions of the contract which should have been principally the cause of its execution is such error as invalidates consent.

Point Three.

The contract was executed under false representations and under insidious machinations which constitute deceit and vitiate the consent.

CHAPTER III.

The Plea of Lis Pendens Should Have Been Sustained.

This case responds to the test of identity. If the mortgage were declared null in the first action (No. 230) the bank would be precluded from foreclosing it, and Case No. 231 would be dismissed on the plea of *res judicata*. If the mortgage were upheld, these appellants could not attack its validity in the foreclosure suit (No. 231) and the plea of *res judicata* could be set up against their defense. This is the proper way to interpret the rule as to the test of identity.

CHAPTER IV.

The alleged ratification of the contract by Joaquin Ibanez de Aldecoa after attaining his majority does not exist.

Point One.

The error of the lower court in not finding that a new trial should have been granted in Case No. 230:

The new trial was asked for on the ground of "newly discovered evidence." The evidence was not new; had not been recently discovered, and the bank, appellee, was intentionally and knowingly negligent in presenting it. Such evidence was immaterial and irrelevant to the issues of the case, there being nothing in the plea of the Hong Kong Bank to justify its admission.

Point Two.

There was no ratification of the contract.

The mortgage contract, not containing the requisites of article 1261. of the Civil Code, cannot be confirmed (Article 1310, Civil Code).

There was no express confirmation.

There was no implied confirmation, because appellant Joaquin Ibañez de Aldecoa was not aware of the nullity; the cause of the nullity had not ceased to exist; and he did not execute any act which *necessarily implied* his wish to renounce the nullity (Article 1311 of the Civil Code).

Point Three.

If there was any confirmation it was done under a mistake of fact.

All the conditions constituting the error which vitiated the contract of February 23, 1906, still existed at the time the contract of June 13, 1907, was executed.

Furthermore, if the contract of February 23, 1906, is null and void, that of June 13, 1907, is also null and void, because the latter was expressly incorporated into and made part of the former.

ARGUMENT.**CHAPTER I.**

THE CONTRACT OF FEBRUARY 23, 1906, WAS NULL AND VOID BECAUSE THE PARTIES HAD NO CAPACITY TO EXECUTE IT.

POINT ONE.

Appellants Joaquin and Zoilo Ibañez de Aldecoa were minors at the time the contract was executed, and although their mother had executed a deed of emancipation, said deed of emancipation was null and void under the laws of the Philippine Islands.

It is a fact stipulated of record, and also contained in the findings of both the Court of First Instance and of the Supreme Court of the Philippine Islands that Joaquin Ibañez de Aldecoa was born on the 27th day of March, 1884, and Zoilo Ibañez de Aldecoa on the 4th day of July, 1885, being the legitimate children of Zoilo Ibañez de Aldecoa and Isabel Palet (Stipulation, Rec. No. 230, p. 155); and that they were born in the Philippine Islands, which fact made them natives thereof in accordance with the laws. On the 23d day of February, 1906, these appellants, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, while still under age, not having attained the age of majority provided by the laws then in force in the Philippine Islands, fixed at 23 years (Article 320 of the Civil Code), they executed a deed of mortgage (Ex. A, Rec. No. 230, p. 4), the annulment of which is the subject-matter of this suit. If the bare fact of their age stood alone there would be no question as to that contract being voidable, but the defendant bank contends that these appellants were not minors, and had capacity to

contract because they had been emancipated by their mother on July 31, 1903, and that such emancipation gave them right to manage their estate and to enter into valid contracts with third parties. This contention of the appellee has brought the first issue to be discussed in this case: Was the deed of emancipation granted by the mother in favor of her respective children Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa valid under the laws of the Philippine Islands?

The Supreme Court of the Philippine Islands held in its decision rendered in case No. 230, in favor of the first subdivision contained in this first point of our brief, to wit:

(1) *That the right of parental authority as to the property of minor children has been abolished by the Code of Civil Procedure of the Philippine Islands (Act No. 190).*

These are the words of the court in regard to this proposition:

"The question is presented whether Doña Isabel Palet could legally emancipate the plaintiffs under the law in force in this country in July, 1903, and thus confer upon them capacity to execute a valid mortgage on their real property with her consent. The solution of this question involves an inquiry as to the effect of the provisions of the new Code of Civil Procedure relating to guardianship upon certain provisions of the Civil Code relating to the control by parents over the persons and property of their minor children.

"Under the Civil Code parents had general control over their property. The following articles of the Civil Code illustrate the extent of the parental authority over the property of their minor children under that Code:

"159. The father, or, in his absence, the mother, is the legal administrator of the property of the children who are under their authority.

"160. The ownership of property which a child not emancipated may have acquired, or acquires by its work or industry or for any good consideration, is vested in the child, and the usufruct in the father

or mother, who has him or her under his or her authority and in his or her company; but if the child, with the consent of the parents, lives independently of them, he or she shall be considered as emancipated for all purposes with regard to said property and shall own it and enjoy the usufruct and administration thereof.

"161. The ownership and usufruct of what the child acquires with the capital of his or her parents is vested in the latter; but should the parents expressly assign to him or her the whole or a part of the profits which he or she may obtain, such profits shall not be chargeable to the latter in the inheritance.

"162. The ownership or usufruct of the property or income donated or left by will to a child not emancipated to cover the cost of his or her education and instruction, is vested in him or her; but the father or the mother shall have the administration thereof if no other proviso has been made in the gifts or bequests, in which case the will of the donors shall be strictly observed.

"Nothing is here said of a bonded guardian appointed by the court and required to account to the court for the property and income of the child's estate. Filiation stood in lieu of these legal safeguards with which the present Code of Procedure envelops the property of a minor child. Not only this, but the income or usufruct of property inherited by the child or bequeathed to it belonged to the parent unless the child had been formally emancipated or lived apart from his parent with the latter's consent. (Art. 160.) True it is that the law prevented the alienation or incumbrance of real property of the child without permission of the court (Civil Code, Art. 164; Mort. Law, Art. 205), and required the parent to give security binding himself or herself to comply with the obligations imposed upon usufructuaries in case the parent contracted a second marriage. (Civil Code, Art. 492; Mort. Law, Art. 200.) But restrictions such as these did not make a parent a guardian. The Civil Code drew a sharp and clearly distinguishable line between guardianship, properly so called, and the *patria potestad*, or parental author-

ity. They were provided for in separate titles, and the definition of guardianship contained in article 199 of that code provided that it 'is the custody of the persons and property only of those who, *not being under parental authority*, are incapable of taking care of themselves.'

"The contrast between the *patria potestad* of the Civil Code and guardianship under our present Code of Procedure, is none the less marked. The latter requires a guardian to obtain his appointment from the court; to execute a bond for the faithful performance of his duties; to make an inventory of the property, the management of which he undertakes, and to render accounts at specified intervals; to manage the estate of his ward frugally and without waste and apply the income and profits thereof to the support of the ward so far as may be necessary. A guardian is a court officer, responsible to the court, and dischargeable by the court alone.

"There was, however, no conflict between the *patria potestad* and guardianship under the Civil Code. This was for the reason, as stated above, that the law of guardianship expressly excluded the *patria potestad* from its operation. But in the enactment of the present code of procedure, no attempt was made, in dealing with the subject of guardianship, to exclude the *patria potestad* from the operation of the law of guardianship. For the purpose of inaugurating a procedure on the subject of guardianship more in consonance with the remainder of the new procedure, whole sections of the California probate procedure were incorporated almost verbatim in the new code. These borrowed sections comprise practically all of our present law of guardianship. As there is no such institution in the State of California as the *patria potestad*, it is manifest that no provision saving it from the operation of the law of guardianship would be found in the laws of that State. In other words, the laws of guardianship in California extended to and included minor children whose parents were still living. It was this law which was incorporated into the new code of procedure, and the *Philippine Commission* inserted no exception saving the institution

of *patria potestad* from its operation.* The language of the new law is too plain to permit of the courts giving it an interpretation which would permit of the continued existence of the *partia potestad* with regard to the child's estate, unless language be wholly disregarded. Section 551 provides that the court may appoint a guardian of the person or estate of a minor. Certainly, this language is comprehensive enough to include all minors, whether their parents are living or not. If the law does not command or prohibit, it permits; and where the grant is unrestricted, it reaches all subjects within the grant. Section 553 expressly abolishes the prerogative of the father and the mother, in the order named, of administering the property of their minor children, and gives the court power to appoint another person. Here, the specific language of the law shows that guardianship is meant to include minor children whose parents or one of them are living.

"Under section 553, the person appointed guardian of the child's estate is entitled to possession. This is clearly inconsistent with the parent's right of usufruct, for the usufructuary is entitled to possession. Section 569 provides for the sale of real estate and the reinvestment of the proceeds. It is apparent that this section contemplates an absolute sale, and that such a sale is not consistent with a usufructuary interest vested in the parent. *These, as well as other specific provisions of the new code, make it clear that the repugnance between the patria potestad and the new law of guardianship is such that the parent, as such, no longer has the power to enjoy the administration and usufruct of the property of his minor children.**

"Keeping this resumé of the repugnance between the *patria potestad* and the new law of guardianship in mind, let us now notice the argument that the appointment of a guardian under the new law for a minor child whose parents or one of them is living is a discretionary duty of the court, and that the *patria potestad* may still exist, subject only to the power of the court to bring the child and his property

* These italics are ours.

under the operation of the new law of guardianship.

"It is true that section 551 confers the power of appointment upon the court as a matter of discretion—'when it appears necessary or convenient.' But the scope of this discretion is restricted to the question of whether there shall or shall not be appointed a statutory guardian. It does not delegate to the court the power of deciding whether the child and his property shall be governed by the Spanish *patria potestad* or by the provisions of the present Code of Civil Procedure. It does not leave to the court the power to bestow the usufruct of the child's property upon the parent as a matter of grace. As we have stated above, *the new law of guardianship was enacted without the slightest attempt being made to preserve the institution of patria potestad.** As we have also seen, the Civil Code selected minor children whose parents or one of them was living as a special class of incompetents for whom a special form of guardianship was provided, and this was recognized as an exception from the operation of the law of guardianship (art. 199). The new law of guardianship as contained in the Code of Civil Procedure was enacted without reference to the pre-existing law relating to incapacitated persons. It was borrowed almost verbatim, and, certainly in all substantial particulars, from the statutes of California, where the Spanish *patria potestad* was unknown. We must interpret and apply that law as it comes to us and allow to it the full vigor of its language. Its application here, in accordance with well known rules of statutory construction and interpretation, should correspond in fundamental point, at least, with its application in the jurisdiction from whence it was taken. It must be taken as the intent of the legislature that the practical application of those provisions of the Code of Civil Procedure relating to guardianship should conform in the main with the practice under the same statute in California. It is obligatory upon the judicial department to follow the intent of the legislative branch of the Government in the application of laws. It is but stating the proposition in different terms to say that our present law of guard-

*Italics ours.

ianship does not contemplate a reference by the court to the provisions of the Civil Code relating to the *patria potestad* in resolving the question of whether a guardian ought to be appointed for a minor child whose parents or one of them is living. That the fact of the child's having a parent or parents may be taken into consideration by the court in determining the question may not be disputed. Section 553, as we have seen, recognizes the closest bond of kinship known to nature as a sufficient guaranty for the faithful care of the child's person. But such is not the case with the child's property. The law says that as to the administration of the estate of a minor child a parent shall only have a preferential right; and, when the parent does secure an appointment as guardian of a child's estate, he must qualify as any stranger would, and perform the same duties and accept the same compensation as a stranger. Can anything be more inconsistent with the right which the *patria potestad* grants the parent of administration and usufruct in the child's property by mere operation of law, and requiring neither appointment nor supervision by the court (except in a very limited sense, Civil Code, art. 160; Mort. Law, arts. 200 and 205)? The truth is that the *patria potestad* and the present law of guardianship cover the same subject; *i. e.*, the custody and care of the person and property of minor children whose parents or one of them is living. By this, of course, we do not mean to restrict the new law to this class of incompetents alone. The provisions of the two laws are entirely repugnant to each other; they are totally irreconcilable if any proper respect be had for the language used in the latest law, and the evident intent of the legislative department in enacting it. The former must, therefore, yield to the latter" (Rec. No. 230, pp. 159-162).

The contention of the Supreme Court of the Philippine Islands in the foregoing part of its decision is fully in accord with our allegations, and we make that part of its decision our own in support of the thesis heading this part of our brief. This contention is furthermore supported by

Judge Chas. A. Willard, the greatest commentator on the effect which the promulgation of the Code of Civil Procedure of the Philippine Islands had on the Civil Code existing in said Islands at the time the former went into effect. Commenting upon article 159 of the Civil Code, which provided that the father or in defect thereof the mother, was the legal administrator of the property of children under the parental authority, Judge Willard says:

"This article has been repealed by section 553 of the Code of Civil Procedure. Certain administration the father may still have, but it is within the power of the court at any time, under art. 553 of the Code of Civil Procedure, to give it to another. If the father in a particular case thus have this right, *he gets it not from his relationship, but from the order of the court appointing him*, and he is responsible to the court as now the guardian is."*

Referring to section 160 of the Civil Code he points out that the provisions of that Code are inconsistent with sections 563, 565, 569, and 571 of the Code of Civil Procedure, which was promulgated in 1901; and like the Supreme Court of the Philippine Islands in the part of its decision which is incorporated into this brief, points out that article 171 of the Civil Code has been repealed by section 770 of the Code of Civil Procedure. All this goes to show that all the effects of the parental authority on the property of minor children have been repealed by the promulgation of the Code of Civil Procedure now in force in the Philippine Islands.

The rights of parents on the property of their minor children having been repealed, it follows necessarily that the right to emancipate, which is a direct consequence of the right of parental authority, has been abolished also by the same Code of Civil Procedure. The Supreme Court of the Philippine Islands in the decision rendered in Case No. 230,

* Willard: *Notes to the Civil Code*, Art. 159.

now before this court, also fully supported our contention made under subdivision two of this point that

(2) *Under the laws in force in the Philippine Islands on the 31st day of July, 1903, the power to emancipate, which is one of the consequences of the right of parental authority, has been abolished.*

Says the court (Rec. No. 230, p. 162) :

"The provisions of the new code of procedure on guardianship being applicable to minor children whose parents or one of them are still living, it is clear that those articles of the Civil Code relating to emancipation of minors by their parents are also, partially at least, repealed. By reference to these articles (314-319), it will be noted that by emancipating his child the parent surrenders to it the right to the usufruct and administration of his property. This, of course, is based upon the *a priori* condition of the law of *patria potestad* that the parent has the usufruct and administration of the child's property to give, which, as we have seen, he no longer has. Not having the right in the child, the formal emancipation of a minor child by the parent cannot now have the effect prescribed in articles 314-319 of the Civil Code. For, were this power of emancipating his minor child still retained by the parent, the latter could, by the exercise of it, deprive the court guardian of the administration and control of the estate, or, in other words, the court proceedings with reference to the person and property of the minor child would, by the parent's act, be annulled.

"We have now determined that the right of administration and usufruct of the child's property, granted by the former law to the parent, and the right of the latter to emancipate his child in accordance with the provisions of article 314 *et seq.*, of the Civil Code, whereby the child takes over the administration and usufruct of his own property, have been repealed by the chapter of the new code of procedure relating to guardianship. But we deem it necessary,

before proceeding further, to say that there are some provisions of the *patria potestad* which are not necessarily in conflict with the new code of procedure. Parents are never deprived of the custody and care of their children except for cause. This is a universal rule of all systems of law, as beneficent to the child as it is just to the parent. Indeed, it might well be said to belong to the realm of natural justice. Happily, however, it is unnecessary to resort to generalities to show that the *patria potestad* of the Civil Code with respect to the *persons* of minor children is not inconsistent with the new law of guardianship. Section 553 of the Code provides that the father and the mother, in the order named, are considered the natural guardians of the child, and as such entitled to the *custody and care for the education* of the minor. Chapter 41 is devoted to 'adoption and custody of minors.' Section 768 provides that the effect of adoption shall be to free the child 'from all legal obligation of *obedience*' to his parents. From section 770, it seems clear that parents may not be deprived of the *custody* of their children because of unworthiness except after hearing. Section 771 provides that in the case of spouses living separate or divorced the court shall determine which of them shall have '*the care, custody and control of the offspring.*' The italicized words clearly acknowledge a right in the parents, under normal conditions, to exercise parental authority over the *persons* of their minor children.

"But so far as the property of such children is concerned, the rights of the parent must be subordinated to the efficient working of the new law of guardianship. It is not, of course, true that a guardian for the property of the minor child will be appointed in all cases. It is always within the discretion of the court to do so. We apprehend that no proper case for such an appointment would be presented to the court where a child's work or industry were productive of small earnings which would necessarily be consumed in its own support, and which the parent is required to give. The same might possibly be said with reference to property acquired by the child for a good consideration. *The purpose of the law is to*

*protect the estate of the child from the avarice of designing persons be they whom they may.** It would hardly seem necessary to carry this doctrine to the point where the parent having the custody of the person of the minor child should not be entitled to its earnings or that portion whereof necessary for its support as compensation for the care and support which such parent is called upon to give. We do not think the repeal of that branch of *patria potestad* relating to the child's property carries with it any such a consequence.

"But there are other questions the solution of which may be difficult if they are presented to the courts in the present state of the law. Under the Civil Code, a child might be emancipated formally (art. 315) or impliedly (art. 160) by the parent. In either case his contracts with third persons were binding upon him, except when they tended to divest him of his real property. Formal emancipation, as we have stated above, is no longer possible."

The appellee seems to contend and argue in his brief against that part of the decision of the Supreme Court of the Philippine Islands which we quote and incorporate in our brief making our own the arguments contained therein. As to this, we respectfully call to the attention of the court that not having appealed from the decision, appellee cannot be allowed to point out any error thereto or argue against the findings of law or fact made therein.

A party who has not appealed nor sued out a writ of error cannot assign cross-error.

Laudram vs. Jordan, 203 U. S., 55.

Southern Pine Co. vs. Ward, 208 U. S., 126.

Guarantee Co. vs. Phœnix Ins. Co., 126 Fed., 170.

But waiving these objections for the purposes of the argument, we beg to submit that

* Italics ours.

(3) *Even if the two foregoing premises be not considered, the emancipation did not take place before any officer of record, it having been executed before a person who, under the law, had no power to authorize said emancipation.*

The provisions which were contained in the Civil Code of the Philippine Islands relating to emancipation, and prior to the abrogation thereof by the Code of Civil Procedure, read as follows:

"Article 314. Emancipation takes place:

"(1) By the marriage of the minor.

"(2) By majority.

"(3) By concession of the father or mother exercising parental authority."

"Article 316. The emancipation treated in the third paragraph of art. 314 shall be granted by a public instrument which shall be recorded in the Civil Registry and in the meantime shall have no effect with regard to third persons."

At the time that these articles of the Civil Code were in force, article No. 1216 of the Civil Code was also in force, defining the phrase "public instrument" as follows:

"Public instruments are those authenticated by a notary or by a competent public official with the formalities required by law."

What were public instruments within the meaning of that word as used in section 316 of the Civil Code?

"Public instruments at that time were of two kinds," says Judge Willard in his Notes on the Civil Code; "those between private persons which must be executed before a notary public and those issued by a public functionary in the discharge of his duties. The public document referred to in art. 316 falls in the first class. By art. 1217 of the Civil Code it was governed in the manner of its execution by the notarial law. This notarial law has been expressly

repealed by act 136, section 81, and act 496, section 126, of the Philippine Commission, and by the latter act notaries public now have only the powers conferred upon them by said act 136, sections 89-91."

"The two systems differ radically. Under the Spanish system the protocols contained the original document signed by the parties. Article 36 of the law of February 15, 1889 (2 Tratado de Notaria, 583) declares:

" 'The protocols belong to the State.' They never left the public office except in case of a fire or for a similar cause. A particular instrument could be removed only in case of commission of a crime in connection with it, and then only by orders of the court, a copy being left in its place (art. 32). Every month each notary was required to send to the president of the Audiencia an index of all the documents executed the preceding month, which index had to show the names of the parties to each instrument, its date and the character of it. These indexes were public.
* * * Notaries were subject to a semi-annual visit of inspection from the delegate of the president, and were subject to disciplinary correction for failure to comply with their duties. To become a notary a man must have been a lawyer or have pursued a course of study marked out for a notarial career (art. 10). They had to give bond for faithful performance of their duties (art. 14)."

"Under the American system now in force any person can, at the discretion of the court, be appointed a notary public. No previous study is required; no bond is required. The only book which the notary is required to keep is a register of his official acts. In connection with the execution of documents between private persons *his powers are limited to certifying that the persons appeared before him and acknowledged the genuineness of their signatures to the instrument.* The instrument is not deposited with the notary but is retained by the parties interested, who may dispose of it as they see fit."

We could not describe more graphically than Judge Willard does the striking difference between what were consid-

ered public documents under the Spanish law in force in the Philippine Islands before the promulgation of the Code of Civil Procedure (act. 190) and act No. 136 of the Philippine Commission, and those under the last two quoted acts. In addition thereto we beg to quote section 299 of the Code of Civil Procedure in force in the Philippine Islands, defining public documents as follows:

"Public writings; the written acts or record of acts of civil authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, of the Philippine Islands, or of the United States, or of any States of the United States, or of a foreign country, and public records kept in the Philippine Islands of private writings or public writings; a copy of a public writing duly certified to be a true copy thereof is admissible in evidence in like cases and in like effect as the original writing."

We clearly see by that provision that documents certified by notaries public are not public documents, within the sense used in article 316 of the Civil Code. Under the meaning of this article and even if the Supreme Court of the Philippine Islands has held in several cases quoted in the decision rendered in Case No. 230 (p. 170), that notarial documents are "public documents" in some cases, yet the writing in which the mother of these appellants purported to grant the emancipation to her sons, cannot be said to be a public document within the meaning of article 316. Those cases cited by the Supreme Court in its decision referred to the meaning of the words "*escritura publica*," as used in article 1924 of the Civil Code, but in the present case (art. 316) it is clearly seen that the law requires something more than any document in which a notary should intervene in any manner. Emancipation is an act by which a minor is given the right to manage his estate and to enter into contracts with third parties as if they were of age. For this purpose it is necessary that something more solemn than the mere signing of

a document before a notary public with only the powers which notaries public hold at the present time should be done. The law requires that the emancipation shall appear of record both in the notary's office and in the Civil Registry, and that it be notice to all. Therefore the emancipation by deed should be clothed with all the solemnities and formalities required by the old notarial law as existing prior to the enactment of act 136 of the Philippine Commission; and inasmuch as the latter act repealed the former law and the notaries public have lost their character as officials of the State, this manner of emancipation in the Philippine Islands is impossible at the present time. We must also call to the attention of the court that notarial intervention in emancipation had precisely for its object that the notary should testify and certify as to the capacity of the parties executing it, and thus if in his judgment the party who was to be emancipated had no capacity to govern his person and property, the notary public could prevent the emancipation and deny the execution of the emancipation deed. This discretionary power is not vested now in the notaries public and was not vested in the notary public who signed with the appellants and their mother the emancipation deed, and therefore we respectfully submit that the purported deed of emancipation is not valid in point of form.

We respectfully submit that there is no available way to-day by which emancipation can take place in the Philippine Islands.

As we quoted before, article 314 provides that emancipation may take place by the marriage of the minor, by majority, or by concession of father or mother exercising the right of parental authority. It cannot take place by the marriage of the minor because the Code of Civil Procedure provides expressly in section 575 that "the marriage of a minor terminates the guardianship of the person of such ward, but not of the estate." It cannot take place by deed, because, as we have shown, there is no officer in the Philip-

pine Islands empowered to authorize any emancipation deed, as provided for in article 316 of the Civil Code, and within the meaning of the said article 316, it cannot take place before the municipal judge, because act 136 of the Philippine Commission which defines the powers of justices of the peace (municipal judges) does not confer them competency to authorize such emancipation, and therefore there is no available way to grant emancipation by concession of father or mother exercising parental authority in the Philippine Islands.

POINT TWO.

(Third Error.)

The court erred in stating that the new law of guardianship as contained in the Code of Civil Procedure promulgated in 1901 did not abrogate the rights of those parents who were administering the estate of their minor children under the right of patria potestad at the time it went into effect, to subsequently emancipate their children and confer upon them the capacity to manage their estate and contract with third persons.

The lower court after stating that the right of parental authority and the power to emancipate have been abolished by the provisions of the Code of Civil Procedure, because, as we have seen in the discussion of the foregoing point, the provisions of this Code are inconsistent with those of the Civil Code, and that the provisions of the latter Code must yield to those of the Code of Civil Procedure—a reasoning with which we are in perfect accord and which is in accordance with the sound principles of law and logic—goes on to say, however, that this repeal did not affect the rights of those parents who had the administration of the property of their minor children before the promulgation of the Code of Civil Procedure.

With all respect to the Supreme Court of the Philippine Islands, we beg to point out that this proposition is untenable in the light of the premises laid out by that court in the first part of its decision, because if parental authority was abolished as to the property of minor children, and from the first day of October, 1901 (the date on which the new code went into effect), parents were to be the guardians only of the persons of minors but not of their property (sec. 553, Code of Civil Procedure), how could a mother continue to exercise that right which, by an express provision of the law, had been abolished? To sustain such a holding it would be equivalent to saying that no guardian of the property of any minor born before the Code of Civil Procedure went into effect could be appointed, because the parental right of father or of mother was already existing before the promulgation of the new law; and such a consequence, which is the only one which can follow this last theory of the Supreme Court, is so unreasonable, that it needs no further comment than to point it out.

The Supreme Court of the Philippine Islands, however, pretends to support its theory that the repeal of the right of parental authority over the property of minor children did not affect those parents who were exercising it at the time the new code went into effect, in a certain section of the Code of Civil Procedure which reads as follows:

"Section 581. Pending guardianships to proceed in accordance with Spanish law, with certain exceptions.—All proceedings in cases of guardianship pending in the Philippine Islands at the time of the passage of this act, shall proceed in accordance with the existing Spanish procedure under which the guardians were appointed; provided nevertheless, that any guardian appointed under existing Spanish law may be removed in accordance with the provisions of section 574 of this act, and his successor may be appointed as therein provided, and every successor to a guardian so removed shall, in the administration of person or estate, or either, as the case may be, of his ward, be governed by the provisions of this act."

And holding that for the purposes of the provisions of this section the management of the minor's estate by a parent under the right of parental authority may be considered a "pending proceeding" of guardianship, comes to the conclusion that inasmuch as the mother of appellants was administering and managing the property of her minor children under her right of parental authority—(and not as their guardian)—she could continue to exercise her rights and, consequently, emancipate them.

The fallacy of the reasoning will immediately become apparent not only by what we have just said above, but by what we are presently going to say, together with an analysis of the wording of the article just quoted.

To sustain its reasoning, the court begins by accusing (Rec. No. 230, p. 167) the Philippine Commission of having acted hastily in the passage of the Code of Civil Procedure. These are the words of the court:

"The various sections of the Code of Civil Procedure were, practically speaking, adopted without material alteration from one or other of the States of the American Union; both executive and judicial affairs were at the time being discharged by a single body—the Philippine Commission—and pressure of business afforded little opportunity or time to carefully survey the field covered by the new legislation and discover how much of the former law would be affected by the new act."

It is to be regretted that such a statement should have been made by our Supreme Court of the Philippine Islands in regard to the first legislative body sent by President McKinley and composed of able men and jurists, presided over by Ex-President Taft, as to whose ability as a lawyer and a judge stand witness many of the decisions contained in the Federal Reports of the United States.

But this is only a passing statement.

Then the decision, after stating that the legislators "ex-

pressed themselves entirely in terms of American law," and, citing some instances of the use of those terms of American law, goes on to say:

"Bearing in mind such extreme instances of the terms in which the authors of the new code expressed themselves, is it possible that they stopped to make a distinction in section 581?"

The distinction referred to was as to whether the words "guardian" and its derivative "guardianship," used in section 581, were used in the same sense as in chapter 27 of the Code of Civil Procedure, or if the term guardianship in said section 581 was to be understood according to civil law.

Aside from the fact that the making of this question again implies an accusation that the legislators were acting hastily and using words without knowing how far they would go and what particular meaning could be given them, and passing laws without previously studying what laws and legal system existed in the Philippine Islands, thus disregarding the instructions which President McKinley had given them, the Code of Civil Procedure shows in a positive manner that the legislators *knew* what were the existing laws, made a study of them, and finding the law of guardianship and the law of parental authority, as they stood then, repugnant to the American ideas of law and administration of justice, decided, as the decision says, to "ruthlessly brush aside the Spanish law and inaugurate the new in the form which had withstood the test of time in the United States" (Rec. No. 230, p. 168). "Because both (the law of guardianship and the law of parental authority over the property of minor children) were equally favored institutions under the civil law and both were equally disapproved by the authors of the new code" (*Ibid.*, p. 168).

That the legislators knew the sharp distinction between a guardian under the Spanish law and the right of *patria potestad* under which a parent had the management, control,

and usufruct of the property of his minor children, is clear by looking into sections 552 and 553 of the Code of Civil Procedure.

Section 552 reads as follows:

"Spanish law as to power of family council in guardianship matters repealed.—All provisions of Spanish law heretofore prevailing in the Philippine Islands, giving to the family council authority in the appointment of guardians for minors or other persons, are hereby repealed."

Section 553 reads as follows:

"Father or mother natural guardian, and to be appointed guardian of estate if competent.—The father or in the case of his death or legal disability the mother, of a minor child is to be deemed the natural guardian of the child, and as such is entitled to the custody and care for the education of the minor but not of his estate, unless so ordered by the court. It shall be the duty of the judge in the appointment of a guardian of the estate of a minor child, to appoint the father or mother or near relative of the child, preference being given in the order just named; but the court shall have power to set aside the order of preference here provided and to appoint any suitable person as guardian either of the person or of the estate of the minor, or both, as the best interests of the child may require. The authority of the guardian shall not be extinguished or affected by the marriage of the guardian."

It is clear after reading these two sections that the legislators knew the sharp difference between the management of the estates of minors by a guardian and family council, and management, administration and usufruct of a minor's estate by a parent, and because they knew the difference they provided for their abolition *in different sections of the Code*.

Therefore the Supreme Court of the Philippine Islands cannot advance the fallacious argument that because section

581 provides that the "proceeding in cases of guardianship pending in the Philippine Islands" at the time of the passage of the Code of Civil Procedure, could "proceed in accordance with existing Spanish procedure under which the guardians were appointed," this clause would also apply, "by implication" to parents who were administering the property of their minor children under that Code. We fail to see how the Supreme Court could arrive at such a conclusion. A careful reading of the article, giving to each word its legal meaning, shows conclusively that no such extension, however greatly we may stretch the meaning of the article, can be made to include "by implication" cases where the estates were being managed by parents under the right of parental authority.

The article or section of the Code in question begins by making use of the words "all proceedings in cases of guardianship." What is the meaning of the word "proceedings"? Black's dictionary defines this word as follows:

"PROCEEDINGS. In *practice*. The steps or measures taken in the *course of an action*, including all that are taken; the *proceedings* of a suit embrace all matters that occur in its progress *judicially*.

"PROCEEDING. In a general sense, the form and manner of continuing juridical business *before a court* or a *judicial officer*: legal and orderly progress in form of law; including all possible steps in an action from its commencement to the execution of judgment. In a more particular sense, any application to a *court of justice*, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages or for remedial object.

"LEGAL PROCEEDINGS.—All proceedings authorized or sanctioned by law and brought or instituted in a *court of justice*, or legal tribunal for the acquisition of rights or the enforcement of the remedy."

Citing, respectively:

Moorewood *vs.* Hollister, 6, N. Y., 320.

Erwin *vs.* U. S. (D. C.), 37 Fed., 488.

Uhe *vs.* Railway Co., 3 S. D., 563.

State *vs.* Gordon, 8 Wash., 488.

Griem *vs.* Fidelity and Casualty Co., 99 Wis., 530.

In Re. Emslie (D. C.), 98 Fed., 720.

Id., 102 Fed., 293.

Mack *vs.* Campan, 69 Vt., 588.

“PROCEDURE.—This word is commonly opposed to the sum of legal principles, constituting the substance of the law and denotes the body of rules, whether of practice or of pleading, whereby the rights are effectuated through the application of the proper remedies.”

Can the administration, management, and usufruct of the parent under the right of parental authority, be said to be a *proceeding* within the meaning of the definitions given above? Could that administration be considered a *pending proceeding*?

In the administration by a parent, there was no proceeding pending before any court of justice. There was no application made to the courts for authority to administer and manage the property. Courts could not deprive the parent of the administration of that property, or of the right of parental authority, except in cases provided for in articles 167 to 171 of the Civil Code, which are now repealed by section 553 of the Code of Civil Procedure, which declares expressly that the parent shall no longer be a guardian of the property of the minor child, and also by section 574 of the same code, which provides for the removal or resignation of guardians. The parent had to account to no one (Decision of the Supreme Court, Rec. No. 230, pp. 159, 162), nor ask anybody's permission to do what he pleased with the property of his minor child, except that he could not alienate the real property belonging to the child without asking the permission of the court by a special proceeding instituted for that particular purpose (Art. 164 of the Civil Code), and there was no procedure to follow in that administration, and there

were no rules to which the management of the property by the parent had to conform, except the general rules under which any other usufructuary or administrator of other's property had to conform to under the Code. There was no record of the administration pending before the courts, and finally the parent had no accounting to make. Could a state of affairs like this be considered a *proceeding of guardianship pending* within the meaning of this phrase as used in section 581? Could we distort the legal meaning of the words "proceeding," "guardianship" and "pending" to include a case which was not a proceeding, and was not a guardianship and was not pending?

If we continue to read the article we are now commenting upon (section 581, Code of Civil Procedure), we shall see that it provides that pending guardianships shall proceed in accordance with the existing Spanish procedure. How could the administration of a minor's estate by a parent proceed in accordance with the Spanish *procedure*, if there was no procedure laid out for it? The article finally refers to guardians *appointed* under the law, and the Supreme Court itself recognizes and accepts that the parent was not a guardian appointed under the law, but that he administered the property *ratione parentis*, as such parent.

The Supreme Court of the Philippine Islands states in its decision that:

"There was no reason for allowing guardianships, so-called, under the Civil Code pending at the time the new code went into effect, to continue undisturbed by the new law, while parents who were administering the property of their minor children under the same code must submit to the new regulations."

But there *is* a reason and a powerful one which the court could not, although it tried to, ignore; and it is this:

That there was nothing to disturb the spirit of the new law in allowing the pending cases of guardianship under

the Spanish law to continue under the old procedure, because the property which was being administered in those cases was for the benefit of minors, and was under more or less effective surveillance of both the courts and the family council. Furthermore, it was a case of expediency in order to avoid the tremendous confusion which would have resulted in disturbing proceedings which were already *in course*, and following a settled set of rules. The property of minors was being taken care of, not by a guardian alone, but by the family council, the protutor and the courts.

On the other hand, in the case of administration by the right of parental authority there was nothing to continue, no proceeding to follow, no set of rules whereby to go, and so nothing contained in that provision of the Code applied or can apply to it. Had the intention of the legislators been to save those cases of administration by parental authority, then we would have that the law could only apply as we suggested before, only to those minors born after the first of October, 1901, because by the same reasoning of the court, a father or mother of a child born before the promulgation of the Code, could say that his right of parental authority had attached, and therefore courts could not interfere with the management by said father or said mother of the estate of his or her child; and this would be not only absurd but against the spirit of the law.

Was it not the purpose of section 553 to put under the protection of the court all the property of minor children and to supervise the administration thereof, to see that the same was being managed and administered for the minor's benefit? How can the court make the legislators say that they did not intend to have this sound, just, and equitable provision apply to those minors whose property was at the time without any control or supervision by the courts? Is not this interpretation against the spirit of section 553 of the Code of Civil Procedure?

Is not this view of the Supreme Court of the Philippine

Islands in utter contradiction with the two findings made by it in the first part of its decision, to wit:

"In other words, the law of guardianship in California extended to and included minor children *whose parents were still living*. It was this law which was incorporated into the new Code of Procedure, and the Philippine Commission inserted no exception saving the institution of *patria potestad* from its operation. The language of the law is too plain to permit of the courts giving it an interpretation which would permit of *the continued existence* of this *patria potestad* with regard to the child's estate." (Rec. 230, p. 160.)

And (*Ibid.*, p. 161):

"The new law of guardianship is such that the parent *as such no longer has the power* to enjoy the administration and usufruct of the property of his minor children"?

The only purpose of section 581 of that Code was the same as that of section 795, viz., to let pending cases follow the procedure under which they had been commenced, modified to the extent of conforming further proceedings in those cases which had not yet reached trial to the provisions of the new Code, and for no other purpose. It is intended to read into that section 581 more than the legislators intended, by both its letter and its spirit, and that is beyond the powers of any court.

In conclusion, and to bring out more strikingly the mistake in the conclusion of the lower court as to the meaning and reach of section 581 of the Code of Civil Procedure, we shall proceed to present a hypothetical case:

Let us suppose that the mother of the appellants had not emancipated them, and that instead of mortgaging the property it should have been necessary to sell one of the pieces of property belonging to her minor children. The Civil Code, when the right of parental authority over the property

of minor children was in force, provided that the parent could not alienate the real property of minor children without asking first the consent and permission of the court, after hearing the public prosecutor. How would the mother have come to the court in that case? Would she merely present her petition for that particular purpose only as a parent, according to the old Spanish procedure, or would she have to ask the court to appoint her the guardian of the estate of her minor children and then have the court order the sale of the property? Undoubtedly she could not proceed according to the old Spanish procedure, but would have to conform herself to the latter form as provided by subsection 4, section 795, of the Code of Civil Procedure, which reads as follows:

"Section 795: Repeal of existing codes, etc.—All codes, statutes, acts, decrees, and orders and parts thereof, heretofore promulgated, enacted or enforced in the Philippine Islands, prescribing the procedure in civil actions or special proceedings in any court or tribunal are hereby repealed and the procedure in all civil actions and special proceedings in all courts and tribunals shall hereafter be in accordance with the provisions of this act. Provided nevertheless
* * *

"(4) That no action now pending in a court of first instance the trial of which has not already been commenced shall be discontinued or abated because not commenced in accordance with the provisions of this act; but all future procedure in such actions and the special proceedings shall be in accordance with the provisions of this act, so far as this act may be conveniently applicable to the conditions of such actions or proceedings."

If, then, in this instance she would have to conform to the new procedure, it is clear that the provisions of section 581 cannot include cases of parents administering the property of their minor children under the right of parental authority, because, to do an act incident to that administration she could not petition for the permission or authority of the

court as parent, but only as a guardian, having first to be appointed as such by the court according to the provisions of section 553.

The foregoing considerations also go in support of a fourth error to the decision rendered in Case No. 230, to wit: that the court erred in establishing that a parent exercising the right of parental authority over the property of his minor children, was substantially if not *eo nomine* as nearly a guardian within the meaning of that word as used in the Code of Civil Procedure, as the Civil Code guardian.

POINT THREE.

The Hong Kong and Shanghai Banking Corporation not being an appellant in this case cannot bring for consideration in this appeal a question which the lower court purposely avoided discussing or making the basis for a decision of the issues in this case.

In Case No. 230 the answer of the defendant and appellee, the Hong Kong and Shanghai Banking Corporation was as follows:

"That said defendant denies generally and specifically each and every one of the allegations contained in the above said complaint and the whole of the same" (Rec. No. 230, p. 52).

In Case No. 231, the plaintiff and appellee did not reply to the appellants' special defense as contained in pages 146-149 (Rec. No. 231). At the time when Case No. 230 was tried before the Court of First Instance, the sole defense of the Hong Kong and Shanghai Banking Corporation, at said trial, consisted in presenting the deed of emancipation (Exs. "D" and "E," pp. 58-59, Case No. 230); Ex. "F," (p. 60, *ibid.*), purporting to be a power of attorney granted by Isabel Palet in favor of Don Fernando Zobel y Ayala to

execute the mortgage deed in her name: Ex. "G" (p. 62), which was the contract of partnership of Aldecoa and Company, and Exs. "D-1" to "D-10" (pp. 85-92, *ibid.*), correspondence passed between the managers of the Hong Kong and Shanghai Banking Corporation, the manager of Aldecoa and Company, these appellants, Isabel Palet's attorney-in-fact, and Isabel Palet. Nowhere in the evidence adduced or in the answer of the defendant and appellee, appears any allegation as to the fact that the appellants were Spaniards or as to what were the laws of Spain, and the rights of Spanish subjects under said laws in regard to parental authority or to emancipation. No issue properly joined was submitted to the trial court or to the appeal court in regard to the fact of the nationality of these appellants.

When Case No. 230 was already pending appeal before the Supreme Court of the Philippine Islands, Case No. 231 came for trial, and without there appearing in any part of the pleadings of that record, any allegation as to the fact that appellants were Spanish subjects or as to what were the laws of Spain, the defendant and appellee, the Hong Kong and Shanghai Banking Corporation, tried to introduce in evidence the testimony of Mr. Rafael del Pan (Rec. No. 231, p. 162), as to what were the laws of Spain, to which attorney for the appellants objected for the reason that the same was immaterial and irrelevant, inasmuch as there was no issue in the case requiring the testimony of said witness. When the case was appealed to the Supreme Court the appellee tried to raise in his brief the question of appellants' Spanish nationality and to have the issues of this case decided according to the Spanish laws as proved by the witness whose testimony was objected to by these appellants. The Supreme Court of the Philippine Islands declined to consider this case or to pass upon the questions submitted to it on the argument in regard to the Spanish nationality of these appellants. These are the words of the decision (Rec. No. 230, p. 174):

"Without determining the political status of the plaintiffs, we have at some length endeavored to show that clothing them with Philippine citizenship, the present law of guardianship as contained in our Code of Civil Procedure, does not apply to them by reason of the saving provision of section 581. The concurrent opinion assumes their Spanish citizenship and hence their amenability to the laws of Spain. We might add that the admirable brief of counsel for the defendant bank contained lengthy and strong arguments to the effect that these children are not citizens of the Philippine Islands but citizens of Spain. If this be true, then it may be that this case ought to be decided in accordance with the provisions of the Spanish Civil Code, as is stated in the concurrent opinion. We *purposely avoided a discussion of the political status of the plaintiffs*, basing our decision entirely upon the existing laws of these Islands as we understand them."

However, in spite of the fact that the Supreme Court of the Philippine Islands, as we see, purposely avoided a discussion on the political status of the plaintiffs, and based its decision entirely upon the existing laws of the Islands, yet appellee, without being appellant in this case, insists on bringing this question up for consideration and, on having the case decided, not in accordance with the laws of the Philippine Islands, but in accordance with the Spanish laws, and devotes a large number of pages in his brief (pp. 57-88 of Appellee's Brief) to the discussion of the issues under the Spanish laws. We hereby submit that points II, III, and IV of appellee's brief in the appeal of Joaquin and Zoilo Ibañez de Aldecoa are entirely irrelevant to the issues raised in this appeal and that the same should be disregarded.

To show, however, that we are not trying to evade, by a technicality, a question raised by the appellee, and that we are ready to meet our opponent on any ground to which he may want to carry us for the decision of the issues in this case, we shall discuss in this part of our brief the questions raised by the appellee.

POINT FOUR.

The appellants were citizens of the Philippine Islands and not subjects of Spain.

(1) On the 10th day of December, 1898, a Treaty of Peace putting an end to the Spanish-American War was signed between the United States of America and Spain. Article IX of said treaty reads as follows:

"Article IX: Spanish subjects, natives of the Peninsula, residing in territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory they may preserve their allegiance to the Crown of Spain by making before a court of record within a year from the date of the exchange of ratifications of this treaty, a declaration of their intention to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.

"The civil rights and political status of the native inhabitants of territories hereby ceded to the United States shall be determined by the Congress."

Section 4 of the act of Congress of July 1, 1902, known as the Philippine Bill, provides as follows:

"Section 4. That all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1899, and then resided in said Islands, and their children born subsequently thereto, shall be deemed and held to be citizens of the Philippine Islands and, as such, en-

titled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the Treaty of Peace between the United States and Spain signed at Paris December 10, 1898."

It was stipulated of record (Rec. No. 230, p. 155) that appellants, Joaquin and Zoilo Ibañez de Aldecoa, were born in the Philippine Islands on the 27th day of March, 1884, and the 4th day of July, 1885, respectively; that their father and mother were natives of Spain, and that the father of these appellants, being *domiciled* and established in business in the Philippine Islands, died in the city of Manila on the 4th day of October, 1895; that Isabel Palet, mother of these appellants, *having her permanent domicile in the Philippine Islands*, in the year 1897 left for Spain with these appellants, by reason of her health, retaining her domicile in the Philippine Islands, and remained in Spain until the year 1902, when she went back with these appellants to the Philippine Islands and continued to *preserve her domicile there* until the year 1906. It was also stipulated that the appellants, Joaquin and Zoilo Ibañez de Aldecoa, from the time of their return to the Philippine Islands in the year 1902, have several times stated before the judicial authorities, and before the administration officials, that they are Filipinos and, as such, they have obtained passports from the American administrative and consular authorities.

Appellants introduced in evidence their Exhibit C (Rec. No. 230, p. 57), which reads as follows:

"CONSULATE GENERAL OF SPAIN,

"Manila, P. I.

"I, Don Arturo Baldasano y Topete, Consul General of Spain for Manila, P. I., certify that Doña Isabel Palet, viuda de Aldecoa, Don Joaquin Ibañez de Aldecoa and Don Zoilo Ibañez de Aldecoa, are not registered as Spanish subjects in the registry of this Consulate General, in witness whereof and in order

that this may be legally used wherever it may be necessary, and at the request of the interested parties, I issue these presents in Manila this 11th day of January, 1908.

"By order:

"(Signed) The Vice Consul, A. F. ARIAS."

Under the laws above quoted and the facts, the appellee contends that Isabel Palet retained the Spanish nationality which she had in the year 1897, when she temporarily left the Philippine Islands. The first argument adduced by the appellee is that it was expressly stipulated in open court at the trial of Case No. 231 that "Doña Isabel Palet is a native of Barcelona, Spain, and is now and has at all times mentioned in this suit, been subject to the Kingdom of Spain" (Rec. No. 231, p. 156), and he claims (Appellee's Brief, p. 59) that the truth of the facts covered by this stipulation was expressly admitted by Mr. Miranda, the attorney representing these appellants in that trial. We beg to call the attention of the court, however, to the fact that *counsel for appellee does not mention that Mr. Miranda, although he admitted the truth of the foregoing fact, objected to its consideration by the court on the ground that the facts so stipulated were incompetent, irrelevant, and immaterial* (Rec. 231, p. 156), and that in case of an adverse ruling he reserved his exception. The reason for the objection to the consideration of this fact by the court was the one that we have given above, to wit, that there was no issue presented by the pleadings and no allegation made by the appellee in his answer as to the fact that appellants or their mother were subjects of Spain and not citizens of the Philippine Islands. Furthermore, because the issue in that case (No. 231) was whether or not the plea that the action for the annulment of the mortgage (Case No. 230) was still pending, was good.

Laying aside, therefore, that part of the argument of the appellee set forth in his brief, let us see if Isabel Palet retained her Spanish nationality after the Treaty of Paris was

signed on the 10th day of December, 1898. Counsel for the Hong Kong and Shanghai Banking Corporation contends that the provisions of Article IX of the Treaty of Paris, and section 4 of the act of Congress of July 1, 1902, do not affect the defendant Isabel Palet for the reason that she was not a resident of the Philippine Islands from the years 1898 until 1902, and that therefore she retained her Spanish nationality. We beg to submit that in the language of the Treaty of Paris, as well as in section 4 of the act of July 1, 1902, the word "resident" cannot be interpreted to mean only those who were physically residing in the Philippine Islands, but those who in the eyes of the law were residents, or in other words, were *domiciled* in the Philippine Islands. Section 7 of the act of April 12, 1900 (31 Stats. at Large, 77, Chap. 191), which provides for Porto Ricans similarly as section 4 does for the Filipinos, was interpreted by the Department of State in accordance with our contention that *personal presence was not necessary to constitute continuous residence in the language of the law*. So it was held by Secretary Hill in the case of *Marrero*, a native of Porto Rico, who had resided in Chile since the year 1884, but who proposed in 1901 to return to Porto Rico to perform the duties of citizenship there, stating that the language of section 7 of the act of April 12, 1900 (*supra*), was to be construed in its general legal sense in which continued personal presence is not necessary to constitute continuous residence and that a native of Porto Rico who makes it his permanent domicile does not, therefore, lose the benefits of this law because he was temporarily abiding elsewhere when it went into effect (Acting Secretary Hill to Mr. Lenderick, April 20, 1901, For. Rel., 1901, 32); and the Attorney General, Mr. Knox (24 Ops. Att'y Gen., 40), held that a native of Porto Rico temporarily living in France on April 11, 1889, was under section 7 of the act of April 12, 1900 (*supra*), a citizen of Porto Rico. We respectfully submit that our interpretation of the word "resident" as a synonym for "domiciled," in the above laws, is correct, because

otherwise the purpose of those laws would fail. It is clear that the reference is to persons who were domiciled, because those persons were precisely the ones who might have an interest to continue to reside in the Philippine Islands, "holding property and exerting themselves in their professions and trade," and could not refer to those who happened to be actually present, without any intention to continue to live in those islands. Under those laws, if any person domiciled in the Philippine Islands failed within the year fixed by the Treaty of Paris to declare their intention before a court of record to retain their Spanish nationality, *ipso facto* lost this nationality and became citizens of the Philippine Islands. It is true that Isabel Palet was absent from the Philippine Islands during the whole time of the year fixed by the treaty to declare her intention, and the argument might be advanced that she did not need to make any such declaration before a court of record. We beg to point out the fact that she was *domiciled* and had large interests there and that she was there represented by agents and attorneys in fact, and if it had been her purpose to retain her Spanish nationality, she would have ordered her agents to make the declaration on her behalf. That her intention was precisely the opposite, that is to say, not to retain her Spanish nationality, is proved by the fact that after she returned to the Philippine Islands she did not register herself in the Spanish consulate and never passed herself as a Spanish subject, but, on the contrary, as a citizen of the Philippine Islands.

The authorities are well agreed that actual presence is not indispensable to retain a domicile after it is once acquired, and that if a person leaves his home for temporary purposes but with the intention to return to it, this change of place is not in law a change of domicile. The temporary absence of Isabel Palet from the Philippine Islands within the year marked by the Treaty of Paris did not deprive her of her residence or domicile therein (Story Confl. of L., section 44). In the case of *The Venus*, 8 Cranch (U. S.), 79, it was stated

that a person who removes to a foreign country, settles himself and engages there in trade, furnishes by these acts such evidence of an intention permanently to reside there as to stamp him with the national character of the State where he resides. The case of *Bosque vs. U. S.*, 1 Phil. Rep., p. 88, is cited against us in appellee's brief (p. 60), but we beg to submit that that case cannot apply to the case at bar. In the case cited, Bosque left the Philippine Islands after the Treaty of Paris was signed and remained away from those Islands for a year and a half after said treaty. *He did not intend to retain his domicile* in the Philippine Islands. There was no *animus manendi*; so much so, that he engaged in the practice of law in the city of Barcelona and did not go back to Manila until he saw the situation more clear. He was not a property holder in the Philippine Islands; he was not actually engaged in trade; he closed his business and abandoned the islands. What parity can there be between this case of Bosque and the case at bar, where the appellant Isabel Palet was *domiciled and continued to be domiciled* in the Philippine Islands; continued to be engaged in trade therein, with a business house open, and holding a large amount of real estate; who never gave any orders to any of her agents to declare for her intention to retain her Spanish nationality, and who on returning to the Philippine Islands never registered herself in the Spanish consulate? That case cannot, therefore, be cited as an authority against the contention that Isabel Palet, on account of not having declared her intention to retain her allegiance to the Crown of Spain before any court of record of the Philippine Islands during the year established by the Treaty of Paris, became *ipso facto* a citizen of the Philippine Islands.

But whatever be the decision as to the nationality of Isabel Palet, there is no question that the appellants Joaquin and Zoilo Ibañez de Aldecoa *were not and could not be* subjects of Spain. Appellee contends that if Isabel Palet was a subject of Spain, her minor children were also subjects of Spain.

In its support, the case of *Martinez de Hernandez vs. Castro*, 2 Porto Rico Fed. Rep., 523, and the case of *Maria Rios de Rubio vs. Victor Burset*, 2 Porto Rico Fed. Rep., 192, are cited. Before discussing these two cases cited by the appellee in his brief (p. 61), we shall cite in favor of our contention that these appellants are citizens of the Philippine Islands and could not but be citizens of the Philippine Islands:

(1) *Article IX of the Treaty of Paris*, wherein it is expressly stated that the "political status of native inhabitants of territories hereby ceded to the United States shall be determined by the Congress." It is expressly admitted that appellants Joaquín and Zoilo Ibañez de Aldecoa were natives of the Philippine Islands and the interpretation given in Secretary Hill's communication to Mr. Lenderick (*supra*) and Attorney General Knox's decision (*supra*), held that the temporary absence of these natives does not debar them from their citizenship:

(2) *The case of Bosque vs. The United States*, 1 Phil. Rep., 88, wherein the court said, commenting upon said clause of article IX of the Treaty of Paris:

"To native-born subjects of the territory no such right of opposition was accorded. It was expressly refused them upon the rejection by the American Commissioners of the proposition in favor of the inhabitants of said territories made by the Spanish Commissioners in Annex No. 1 to the 22d protocol (Conference of December 10, 1898). The native subject *could not evade the power of the new sovereign by withdrawing from the islands*, nor while continuing to reside therein, make declaration of his intention to preserve the Spanish nationality enjoyed under the former sovereign. Neither the Government of the United States nor that of Spain can consider them as other than Philippine subjects. This is expressly stated by the Spanish government in article 1 of its royal decree of May 11, 1901."

(3) *Article 17 of the Civil Code* in force in the Philippine Islands:

"The following are Spaniards (Filipinos)*

"(1) Those born in Spanish (Philippine) territory."

The case of *Martinez de Hernandez vs. Castro* (*supra*), which is the first of the cases cited by appellee, refers to the children of a Spaniard who had retained his Spanish nationality under the Treaty of Paris by making the express declaration of his intention to retain that nationality, and cannot, therefore, be applied to the present case, where the mother of the appellants neither by herself nor by proxy ever made such declaration, but on the contrary, her acts showed that she never intended or wanted to make that declaration.

The other case of *Rios Rubio vs. Buset* (*supra*) shows that Maria Rios Rubio was born of Spaniards, was herself a native of Mexico, and not of Porto Rico, and was married to a Spaniard, who was registered as a Spanish subject from the year 1899 to 1905: we fail to see how this case can be applied to the case at bar.

On the other hand, granting for the purposes of argument that Isabel Palet should be considered a Spaniard and that while the children in their minority should follow the nationality of their mother, it is none the less true that *in the Philippine Islands they could not be considered foreigners* because the laws of the Philippine Islands made them citizens thereof, for the reason that they were natives of those islands. And it is a clearly established principle of private international law that

* The courts of the Philippine Islands have established the rule that wherever in the provisions of the Civil Code the word 'Spaniards' is used, the same can be substituted and is to be substituted by the word 'Filipinos.'

"When a conflict arises between two nationalities of origin, of which one is that of the magistrates who have jurisdiction over the subject matter, no hesitation is allowed to the judge; he must apply to the person whose juridical status is discussed before him the law of the country in whose name he is dispensing justice, and therefore, if such person, although he is domiciled abroad, is within the conditions to which the local legislature has subordinated the acquisition of nationality of origin, *shall treat such person as one of its nationals*. The rules in regard to citizenship rights, the means to acquire or lose them, affect indeed the very life and essential interests of the State. They belong to public international order. The following case will make it clear. A person born of French parents in the territory of a State in which the theory of *jus soli* applies, as in Venezuela, for instance, the administrative and judicial authorities of that nation will impose upon him the nationality of the place of birth, and will therefore submit him to the obligations and duties to which the rest of the citizens of Venezuela are subjected." (*Weiss' "Manual of Int. Law"* (Spanish edit.), vol. 2, p. 154).

In virtue of the foregoing, we beg to submit to this Honorable Court that the appellants were citizens of the Philippine Islands and not subjects of Spain.

However,

POINT FIVE.

Admitting for the purposes of the argument that the appellants and their mother were subjects of Spain:

(a) *The mother could not emancipate them in the Philippine Islands:*

The counsel for appellee seems to lay the whole strength of his argument in favor of the proposition that the mother of appellants could emancipate them in the Philippine

Islands on article 9 of the Spanish Civil Code, which provides as follows:

“The laws relating to family rights and obligations or the status, condition and legal capacity of persons, are binding upon Spaniards, even though they reside in a foreign country;”

and after citing some Spanish commentators like Manresa and Mucius Scoevola, and other Spanish and French authorities to the fact that the right of *patria potestad* or parental authority belongs to the personal statute of a foreigner and follows him wherever he goes, he continues contending that the right of emancipation of a minor child being, so to speak, a consequence of the right of parental authority, also belongs to the personal statute and can be exercised abroad, even in those countries where, like in the Philippine Islands, the laws do not recognize the right of the parent to emancipate her child. We fail to see in any of the authorities cited by the learned counsel for appellee, in his brief, anything that may warrant such a conclusion. On the other hand, the greatest weight of authority on Private International Law holds that *emancipation does not belong to the personal statute of a person but to the real statute or lex rei sitæ*, because by emancipation a minor acquires the right to manage his estate, and it is logical that only those persons whom the laws of the place where the property is located give the right to administer and manage it should be allowed to do so. To hold that the laws of one country can dictate as to who is capable and who is not capable to administer or exercise rights on real property situated in another country is against the weight of well recognized principles of Private International Law, both here and in the European continent. Gardiner in his work “*Institutes of International Law, Public and Private, as settled by the Supreme Court of the United States, etc.*” (1860), p. 111, says:

"The acquisition of rights in real property are prescribed and regulated by the laws of the country where the property is situated. This exclusive control of realty is an essential element of sovereignty. No other community can interfere with the method by which real property may be acquired or held, the duration or quantity of interest in it or the conditions to which the enjoyment is subject."

Whatever might be the effects of emancipation on personal property, it is settled that it cannot affect the rights on real property, if contrary to the laws of the place where the property is located. The same author just cited, at pp. 132 and 133 of his work, says:

"Immovables and realty are exclusively governed by the law of the place where it is located, and no right therein or lien thereon or title thereto can be acquired except in conformity to it (*Wheat. Int. Law*, p. 2, ch. 2, sect. 1, 2, 3; 10 *Wheat.*, 202, 469; 9 *ibid.*, 565; 6 *Paige Ch. Rep.* 627; 3 *Pet.* 290; 14 *ibid.*, 130; 16 *ibid.*, 567; 23 *Barb.* 79; *Storey Conf. Laws*, sect. 430, 431, 435, 436, 445, 448, 465, 474, 504, 555). The local and municipal law, therefore, regulates the capacity of a party to take, hold, alienate, devise and encumber, and the mode of doing it, and the forms necessary in each case."

Professor Bar in his work on International Law, section 202, says:

"The rights of a father on the property of the children are to be determined by the same principles which decide whether and to what extent the personal law or the *lex rei sitæ* is to regulate questions of patrimonial rights between the spouses.

"*Capacity to acquire and convey.* There can be no question that as to realty, capacity is determined by the *lex situs* (*Story, Conf. Laws*, sect. 424, 434). By some continental jurists, it is true, the *lex domicilii* is applied to immovables in cases of succession, but in England and America, even this species is not recognized. No persons can acquire or convey real

estate except those whom the *lex rei sitæ* may recognize as capable for this purpose."

and the same author at section 137 says:

"If we are concerned therefore with the acquisition of real property, the *lex rei sitæ* will determine the question of the *capacity* of foreigners to acquire it."

The term of minority is a matter of distinctive national policy and as affecting rights of real estate no foreigner can be allowed to grant capacity by his own act to another foreigner to manage, administer, sell or convey real estate before arriving at the age at which the law of the country where the property is situated fixes majority.

"Minority and infancy are by no means controvertible and the period at which a State fixes the majority of its subjects is determined largely by national policy. Laws establishing the terms of majority are laws of national policy which each State imposes on *its residents*, no matter what may be their allegiance or their domicile. It is true that the enthusiastic advocates of ubiquity of national status insist that one who is either a major or a minor by his domicile (or nationality) must be regarded as a major or minor throughout the civilized world. Yet these are speculative views or theories and not the practical conclusions of the courts" (*Wharton Conf. Laws*, sect. 130).

In *State to the Use of Gilbreath vs. Bunce et al*, 65 Mo., 349, it was stated that

"An order of a court of another State, made in conformity to a statute of that State, and proposing to relieve an infant residing in that State from the disability of non-age, can have no operation in Missouri."

Wharton, again in section 113 of his work on the *Conflict of Laws*, says:

"Every State is a sovereign within its own jurisdiction and its laws are supreme as to property within its limits, and a mere order of a foreign tribunal authorizing the relator to do an act which our law says he is incapable to do can have no effect here."

and so, a State which fixes upon a specific age as essential to capacity will not permit this limitation to be annulled by exceptional foreign legislation by which a particular individual under such age has such capacity specially and arbitrarily assigned to him (*Wharton, Conflict of Laws, section 114*).

This principle is embodied also in article 10 of the Civil Code in force in the Philippine Islands:

"Personal property is subject to the laws of the nation of the owner thereof; real property to the laws of the country in which it is situated."

We have discussed heretofore, pages 52-53, that the only way in which a person can manage his estate in the Philippine Islands is by attaining his majority; and inasmuch as emancipation, as rightly held by the Supreme Court, has been abrogated by the new Code of Civil Procedure, the minor, be he a citizen of the Philippine Islands or a foreigner, according to the laws in force in said islands and the authorities above quoted, cannot acquire the management and administration of his real estate until attaining the age fixed by law at which he is to be relieved from his incapacity.

We quote again the language of the court (Rec. No. 230, p. 162):

"Were this power of emancipating his minor children still retained by the parent, the latter could by the exercise of it deprive the court guardian of administration and control of the estate, or on the other

hand, the court proceedings with reference to the person and property of minor children would by the parent's act be annulled."

If, then, in the Philippine Islands a parent or guardian cannot emancipate his minor children and confer upon them capacity to manage their real estate as if they were of age, a foreign parent, even if he has that power under his national law, cannot emancipate his minor children in the Philippine Islands, since foreign parents or guardians are not permitted to exercise powers not granted to a home guardian or parent.

"Remembering once more that infancy is to be distinguished from minority in this, that the first is a natural incapacity patent to all men, while the second is an artificial incapacity fixed arbitrarily by each State in accordance with its particular policy, we must hold that while each State will recognize the natural guardianship of a foreign parent over an infant child, and to a certain extent of a foreign guardian over an infant ward, *it will not invest each foreign parent or guardian with powers which the home laws do not grant to a home parent or guardian* (Wharton Conf. Laws, sect. 116)."

We respectfully submit, then, that if we were to admit that the mother of the appellants was a subject of Spain, she could not emancipate her children in the Philippine Islands.

There is still a further argument to advance in favor of this proposition. We have argued at pages 72-75, that whatever the nationality of the mother of these appellants might be, these appellants, by the Treaty of Paris and by the law of the place of their birth, were citizens of the Philippine Islands.

Emancipation is made for the benefit of the child, and not for the benefit of the parent. By emancipation, as we have pointed out before, a minor is given rights to manage his estate as if he were of age, but the State has the right to say

who is and who is not capable of managing his own estate. Therefore, in cases of different nationality between parent and child or guardian and ward, the foreign parent or guardian cannot exercise more rights than those allowed to him by the law of the child's nationality. Bar, in his work on International Law (section 191), puts this principle almost in the same words:

"If the child has a different nationality from that of the father, the latter has no more extensive rights than are allowed him by the law of the child's nationality."

We then respectfully submit that the emancipation of these appellants by their mother was null and void, because the mother could not execute such emancipation in the Philippine Islands.

* * * * *

But let us go beyond in our argument. Let us grant, for the sake of the argument, that the mother of the appellants could emancipate them in the Philippine Islands. Our next contention is that—

(b) *The emancipation was not made in accordance with the laws of Spain.*

The Spanish Civil Code provides, article 314:

"Emancipation takes place:

(1) * * * (2) * * *

(3) By concession of father or of mother exercising the *patria potestas*."

Article 316:

"The emancipation to which paragraph 3 of article 314 relates must be granted by public instrument or by appearance before the municipal judge, and must be noted in the civil registry, until which time it will not produce effects against third persons."

According to the last article cited, in order for the emancipation to be valid it is necessary:

- (1) That it be made by public instrument.
- (2) That it be registered in the civil registry.

Was the emancipation act executed by public document? No; and in support of our contention we beg to refer here to our argument adduced on pages 49-52 of this brief. We have shown that the public document required by article 316 of the Civil Code of Spain is something more than the notarial documents which the decisions of the Supreme Court of the Philippine Islands have considered as public documents for the purposes of article 1924 of the Civil Code of the Philippine Islands.

Article 11 of the Civil Code of Spain, which provides that

“the forms and solemnities of contracts, wills and other public instruments are governed by the laws of the country in which they are executed,”

cannot be cited as an argument against us because the document in question whereby Isabel Palet pretended to emancipate these appellants was not executed in the form and with the solemnities of notarial documents in the Philippine Islands. Notarial documents are executed now in the Philippine Islands in the same form and manner as they are in the United States of America, a notary public in the Philippine Islands, according to act 136 of the Philippine Commission, only being authorized to take the acknowledgment of a written document presented to him by the parties who executed and signed it. By merely reading the act of emancipation (Rec. No. 230, pp. 27-28), we can see at once that it is a certificate issued by a notary of *verbal statements* made by the parties before him and the two other witnesses who signed with them—not a document executed by them, but a certificate made by the notary.

It cannot be argued that this is the manner in which the deeds of emancipation are made in Spain, because article 11

of the Civil Code, which is quoted, says that public documents must be governed by the *lex loci*; neither can it be argued that emancipation being unknown in the Philippine Islands at the time the supposed deed of emancipation was executed, and in the impossibility of applying local forms, the deed of emancipation was made before a notary public using the foreign form, because the principle of international law is well settled as to the fact that

"if emancipation is unknown in the foreign country, if it is impossible therefore to apply local forms, if on the other hand the use of legal forms (prescribed by the French [Spanish] law) is forbidden to our nationals on account of the lack of justices of the peace with like jurisdiction as ours, if at least these judges cannot perform acts which are foreign to their jurisdiction, it is our opinion that the French (Spanish) consul has the duty to intervene, even in Christian countries, taking the declaration of the father or statement of emancipation after the deliberation of the family council which shall be convened and presided over by him in accordance with French (Spanish) law" (*Weiss Zeballos* (Spanish edit.), vol. 2, p. 59).

We respectfully submit that according to the authorities just cited, together with our foregoing argument and those given at pages 49-52 of this brief, the only available way for the mother of these appellants to have executed the act of emancipation would have been before the Spanish consul, and inasmuch as it was not executed before said consul said emancipation cannot be valid.

(c) *The act of emancipation was not registered according to Spanish law.*

As we have pointed out before, and as said by Manresa in his commentaries to article 316 of the Civil Code—

"The first thing that attention must be called to in regard to the third manner of emancipation is that it

is required that it be done by public instrument and that it be registered in the civil registry."

Let us grant, for the purpose of this argument, that the first requisite was fulfilled, to wit, that it was executed by public instrument; was the second requisite of article 316 of the Civil Code complied with?

Nowhere in Exhibits A and B (Rec. No. 230, pp. 27, 28), or in any part of the records, appears that the so-called acts of emancipation were registered in the civil registry.

It cannot be said that it could not be registered in any civil registry, because there is no such civil registry in the Philippine Islands as it exists in Spain. Though this may be true, yet it can only be so as to those who are Filipinos, but not as to Spaniards, whose law provides expressly (article 326 of the Civil Code of Spain),

"that the registry of civil status shall include the record or entries of births, marriages, emancipations, acknowledgments, and legitimations, deaths, naturalizations and residences, and shall be in charge of the municipal judges or other officials of the civil order in Spain, *and of consular or diplomatic agents in foreign countries.*"

Exhibit C (Rec. No. 230, p. 57) reads as follows:

"CONSULATE GENERAL OF SPAIN,
"MANILA, P. I.

"I, Don Arturo Baldasano y Topete, consul general of Spain for Manila, P. I., certify that Doña Isabel Palet, viuda de Aldecoa, Don Joaquin Ibañez de Aldecoa and Don Zoilo Ibañez de Aldecoa, are not registered as Spanish subjects in the registry of this consulate general. In witness whereof and in order that this may be legally used wherever it may be necessary, and at the request of the interested parties, I issue these presents in Manila this 11th day of January, 1908. By order

"(Signed)

"The Vice Consul,
A. F. ARIAS."

We respectfully submit that the second requisite for the act of emancipation to be valid according to the Spanish laws not having been complied with, said emancipation can have no effect and is null and void.

* * * * *

By virtue of authorities quoted by us under subsection (a) of the point we are now discussing, we beg to submit the following proposition:

*That even if it be granted that the emancipation was valid in point of form, the same purporting to confer the right on these appellants to manage their real estate in the Philippine Islands, in express violation of the laws there in force, the principle of *lex rei sitæ* must govern and as to real estate situated in the Philippine Islands that emancipation can have no legal effect.*

POINT SIX.

Even granting, for the purposes of the argument, that the emancipation deed was valid, the mortgage executed by these appellants was null and void:

(a) Because the mother could not, according to the laws of the Philippine Islands, or of Spain, give any consent to these appellants to execute said deed without the authority of the court, whether we consider

(1) That for the purpose of alienation or encumbrance of real estate the parental authority still subsists, or

(2) That a new relation is created between parent and child.

The Supreme Court of the Philippine Islands in its decision (Rec. No. 230, p. 164), states the following:

"By mutual consent of the parent exercising the *patria potestad*, and the child subject to it, it could be terminated after the child reached the age of 18, in which case there was substituted therefor a veto power exercised by the parent upon the child's capacity to borrow money and to sell or encumber its real property. Under this arrangement, whether the parent emancipated his child or continued exercising the *patria potestad* over it, until it reached the age of majority, the child was subject to a continuing status of dependency upon the parent until it became of age. The parent was permitted to exercise a limited control over the property of his minor child after having emancipated it, for the same reason that he is permitted to exercise *patria potestad* before its emancipation, that is to say, the parental love and affection was deemed a safeguard against covetousness and an incentive to watchfulness over the child's property equivalent to those legal safeguards exacted of an ordinary guardian; in other words, the relationship between the parent and the child was deemed sufficient reason for entrusting to the former those duties which would have devolved otherwise upon a guardian. In point of fact, it would seem that instead of *patria potestad* being terminated by the parent emancipating his child there was still a remnant of it left in the parent's absolute veto of the child's right to borrow money or dispose of or encumber his real property. The law gave no sanction to its contracts when entered into without the parent's consent. The parent's control over the estate of his minor child before as well as after emancipation was deemed a sufficient substitute for guardianship properly so-called."

By the words of the court above quoted, the relation between parent and child after emancipation can be interpreted or be viewed in two different lights:

- (1) As a continuation in a limited form of the right of parental authority (*patria potestas*), or
- (2) As a new relation existing between the parent and

the child in which the parent became a guardian or curator of the property of his minor child.

Viewed under any one of these two lights we submit that the mother could not, without the authority of the court, give her consent.

Section 164 of the Civil Code of Spain and also of the Philippine Islands, which the Supreme Court of said islands held in this case to be in force as to a parent exercising the right of *patria potestas* before the enactment of the Code of Civil Procedure, provides:

"The father or the mother in a proper case, cannot alienate the real property of the child, the usufruct and administration of which belongs to them, nor encumber the same except for such reasons of utility or necessity, and *after authorization from the judge of domicile*, hearing the Department of Public Prosecution, excepting the provisions which with regard to the effects of transfers the mortgage law establishes."

If we view the relation between the mother of these appellants and the appellants as continuous exercise of the right of parental authority, then the provisions of the above-quoted article must apply in full force and the direct consequence is that the mother could not directly or indirectly, *without the authorization of the court*, sell or encumber the real estate of her minor children. The law is clear enough that if the mother was exercising her right of parental authority in full under the provisions of the Civil Code, and having absolute control over the property of her minor children, she could not sell or encumber her minor children's real estate without getting authorization from the court, after hearing the Public Prosecutor (Fiscal). Is it logical that having a limited right of parental authority modified by emancipation, she could have more power as to the disposition of that property by merely giving her consent without

the need of authority from a court? Would not such a situation imply that a parent could evade the restrictions imposed on him by the law, which tends to protect the rights of property of the minor child on his real estate by making it necessary to apply first to a court of justice for the alienation or encumbrance of same? If such an argument could be adduced, it would mean that if a parent desires to encumber or to sell the property of his minor child without asking any judicial authorization therefor, he can evade the provisions of section 164 and deprive the child of the protection of the courts by granting that child emancipation and then influencing him to sell or encumber his real estate, giving him his mere consent. Such an act the law or the courts of justice could not countenance for a second, and we therefore respectfully submit that if we are to consider the relation of parent and child after emancipation as a limited continuation of the rights of parental authority, the authorization of the courts was necessary for the mother of the appellants to give her consent to her emancipated minor children to encumber or sell their real estate. Not having done so the mother of these appellants could not give her consent to these appellants to mortgage their property.

If we were to view this matter under the other aspect, that is to say, as a new relation created between parent and children, then we respectfully submit that, this being a new relationship, a sort of guardianship or curatorship, as the court says, over the estate of her minor children, it must fall within the provisions of the Code of Civil Procedure, which were already in effect when this new relationship was created.

By having emancipated her children the mother of these appellants lost her right of parental authority. Article 167 of the Civil Code states that "parental authority terminates (1) * * * (2) by emancipation;" therefore the relation between parent and child after emancipation is, as the court said, a relation akin to guardianship, and being so,

it had to conform to the laws of guardianship in force in the Philippine Islands. To continue to have any control over the property of minor children, no more by right of parental authority because it terminated by emancipation, but as a guardian of the child, for the purpose of encumbering or selling real estate, such a right could not be exercised without having been duly appointed by the court as such guardian (Sect. 553, Code of Civil Procedure).

These appellants could not by themselves and without the consent of their duly authorized guardian sell or encumber real estate; and inasmuch as the consent of their mother was given without having been appointed guardian of these appellants and without ever having obtained the authorization of the court to empower these appellants, she could not consent to these appellants encumbering their real estate and mortgaging it to secure the indebtedness of Aldecoa and Company. Article 317 of the Civil Code and article 553 of the Code of Civil Procedure having been violated, such consent is null and void, and the mortgage executed by these appellants is therefore null and void.

We further contend that even granting for the purposes of the argument that the mother could give her consent after emancipating her children without authorization of the court, according to article 164 of the Civil Code and section 553 of the Code of Civil Procedure, yet

(b) That consent was null and void because

(1) The mother could not give her consent, being an interested party in the execution of the mortgage deed.

(2) There was no such consent as contemplated under article 317 of the Civil Code.

(3) She could not delegate to a third party a power which was inherent only in a parent.

1. We have seen in the statement of facts, No. II, p. 14 (Rec. No. 231, pp. 83-189), that Isabel Palet, the mother of these appellants, was the principal partner of the firm of Aldecoa and Company, wherein she had put in as capital the sum of ₧200,000; we have also seen that (Rec. No. 231, p. 393) although the mother of these appellants had made them partners of Aldecoa and Company, yet, inasmuch as she had not asked for the consent of the court to that effect, the Supreme Court declared that these appellants were not and could not be partners of that firm. It is clear, therefore, that the sole beneficiary of the mortgage executed by these appellants was the mother of these appellants, and not the appellants themselves, who had no right or interest in said firm.

Article 165 of the Civil Code provides that

“Whenever in any matter the father or mother may have an interest opposed to that of their children, not emancipated, a next friend shall be appointed for the latter to represent them in court or otherwise. The judge, on petition of the father or of the mother of said minor of the Department of Public Prosecution, shall appoint as the next friend the relative of the minor to whom the legitimate guardianship should belong in such cases, and in the absence of the latter another relative or any other person.”

From the provisions of the foregoing article it is clearly seen that the mother, being personally interested in the mortgage on the property of her minor children, whether emancipated or not, could not by herself either encumber the real estate belonging to these appellants or give these appellants her consent to mortgage their own real estate for her own benefit. The law could not countenance such a breach of the confidential relationship existing between parent and child, and her consent was therefore null and void.

The exercise of parental authority under the old Spanish law in its practical aspect is nothing but the execution of the

legal mandates conferred upon the father or the mother by the ministry of the law, confiding to them the representation of the minors and the administration of their property in the form, extension, and time which the law determines. The purpose of this legal mandate is to convert the real absence in juridical presence of the person of the minor child. The status of representation has reference to both contracting parties, and whenever there is a contract in which the party representing the minor has to be also himself a party to it in his personal capacity, an incompatibility immediately arises on account of the juridical unity of the person. The contract in this case is legally impossible, because the very idea of a contract repels it, and it is so because in this case the duality of persons cannot be recognized or conceived, and the principle that nobody can contract with himself has a rigorous application in this case. The appellants could not execute the mortgage without the consent of their mother, and therefore the mother had to be a party with them to enable them to enter into the contract. At the same time the mother was a party to the contract, and was to be directly benefited by the mortgage of these appellants. Therefore we have her here in her dual capacity of curator of the appellants and a party to the contract. Sanchez Román, in his work "Studies of Civil Law," vol. 4, p. 181, says:

"The following are incapable to contract in a civil status of relationship, be it between contracting parties themselves or in regard to third persons: * * * (c) the *filius familiae*, or that which is under the parental authority of his father or mother cannot contract with any of them for the very reason of unity of person, except in some cases in which by incompatibility of interests between parent and child * * * the contract may be executed through representation, which is then supplied for the children, of a curator or representative according to the law."

We respectfully submit, then, that if as the lower court says, the right of parental authority still continued for the

purposes of the alienation or encumbrance of the real estate of the minor child, then the mother could not give these appellants her consent to contract with herself and for her own benefit, and, no guardian having been appointed to represent the minors in the execution of her mortgage, this mortgage is therefore null and void.

2. But even if it were held that the consent of the mother could be given in this case, yet we finally allege that there was no such consent given by the mother.

Article 317 of the Civil Code provides:

“Emancipation qualifies the minor to control his person and property, as if of age; but, until he attains his majority, the person emancipated can not borrow money nor encumber or sell real estate without the consent of his or her father, and, in the absence of the latter, that of the mother, and in the absence of both, without that of a guardian. Neither can he nor she appear in court without the attendance of said persons.”

This legal disposition suggests a doubt in the complete discretion of the emancipated minor and denotes the sentiment of protection towards the minor. In order to provide that in the course of his life and in regard to property of considerable value, he may not fall a victim of covetousness on the part of others, the law imposes on him the obligation to apply to his parents or his guardian when he is to encumber or sell his real property, or in any manner to affect it.

Will it be sufficient for the purposes of law that the father or guardian shall give their consent in writing *in general terms* and for any case that may come up, allowing and consenting that the emancipated child shall do as he pleases with his real property, *wherever or however it may be necessary* or by mere suppositions or by information of third parties? If it were possible to use any one of these forms, this would amount to as much as to say that he who grants

emancipation may annul the effects of article 317, granting at once and in general and for whenever it may be necessary, the consent required in that article. This would make wholly illusory the precautions and limitations imposed by law, and, therefore, as long as the law does not authorize it expressly, it shall always be an illegal act.

3. Could the father or the mother or the guardian delegate that faculty and that duty imposed upon them by article 317, to a third party? We respectfully submit that this is a duty imposed by law *in consideration of the condition of father or mother or guardian*, and, therefore, we allege that the parent or the guardian could not delegate that duty or obligation to a third party, unless it be through the court.

In the present case the mother, as we have pointed out before, did not have the representation of the minors for the purposes of article 317 of the Civil Code, because although we might grant that she could have emancipated her minor children, this does not imply that she had subsequently the guardianship or curatorship over their property, because in order to be so, she would have to be appointed by the court in accordance with section 553 of the Code of Civil Procedure. On the other hand the fact of being a guardian or a curator in regard to the real property, would not empower her to encumber or dispose of it nor consent to its encumbrance or alienation without the consent and order of the court (Sect. 569 of the Code of Civil Procedure.) It is therefore clear that the mother of these appellants could not *a priori* consent in general terms and without previous authorization from the court that her children, the appellants, should mortgage all the real property in case this should be necessary, nor could she delegate this faculty to a third party without first obtaining permission from the court.

The mother was not present in the Philippine Islands when the mortgage deed was executed. She was in Madrid and

away from the real site of the property or of the place of business of Aldecoa and Company. Her only knowledge of the condition of things was the information she received through correspondence held with the manager of Aldecoa and Company, and the pressure that was exercised on her by said manager and that of the Hong Kong and Shanghai Banking Corporation (Ex. J, Rec. No. 230, p. 83; Ex. D-1 to D-10, Rec. No. 230, pp. 85-92). She was not present in the Philippine Islands to determine by herself whether the consent to her children, these appellants, was proper to be given or not. She confined herself to executing a power of attorney in favor of Mr. Zobel (Rec. No. 230, p. 29), to execute a mortgage securing the debt of Aldecoa and Company to the bank, and to grant also

“in favor of her children Don Zoilo and Don Joaquin Ibañez de Aldecoa *in case it is deemed necessary, the proper authority or permission to mortgage their own property* by said instrument for said purpose.”

She left it to the discretion of Mr. Zobel, or to somebody else's discretion; the power of attorney is not definite in its terms.

Don Fernando Zobel, by virtue of the foregoing statement in said power of attorney, believing himself with authority to consent and give authorization to these appellants, and these appellants, believing they had such consent by virtue of the authorization given by Mr. Fernando Zobel, executed on the 23d day of February, 1906, the mortgage deed Exhibit A, the annulment of which is the subject matter of this suit.

Is such consent, granted in that way, valid according to law? Is the spirit of the law complied with? Does not the Supreme Court in its decision say that “the consent of the parent was necessary in the sale or encumbrance of real estate of a minor child emancipated because the parental love and

affection was deemed a safeguard against covetousness and an incentive to watchfulness over the child's property equivalent to those legal safeguards exacted of an ordinary guardian"? Is that a compliance with those duties which as the court said "would have devolved otherwise upon a guardian"? Can a guardian delegate his authority as such guardian to a third person without the consent of the court and without appointment of such person by the court as such guardian? These questions, with the exception of the third, are all answered in the negative, and involve such an elementary principle of law that citations of authorities are wholly unnecessary.

(c) Even if such consent could be held valid under the foregoing premises, it was given under a mistake of fact, and therefore is null and void.

Even if we consider that the consent given by Isabei Palet, through her attorney in fact Mr. Zobel, could be held valid under the law, we respectfully submit that such consent was null and void because it was given under a mistake of fact. It is evident that the consent given by the mother of these appellants, or better to say by Mr. Zobel, on her behalf, was due to the fact that both the mother and her attorney in fact considered these appellants as partners of Aldecoa and Company, and that they consented to the mortgage in order to save the interest of these appellants in said partnership. This being true, and in fact it is the only reason that can be given for that consent, it is clear that inasmuch as these appellants were not in fact partners of Aldecoa and Company and had no interests to lose, as such partners, there was beyond question a mistake of fact which vitiated that consent, which the mother of these appellants, otherwise, would not have given; and if any other reason fails of those given under this point, we respectfully submit that this alone would be sufficient to hold such consent null and void and in consequence the mortgage contract also null and void.

CHAPTER II.

The contract is null and void because there was no consideration and was furthermore executed under a mistake of fact, and under undue influence and misrepresentations from the manager of Aldecoa and Company and from that of the Hong Kong and Shanghai Banking Corporation, which constitutes deceit and vitiates the consent.

POINT ONE.

There was no consideration.

What was the consideration for appellants in this case to execute a mortgage of their property in favor of the Hong Kong and Shanghai Banking Corporation?

If we examine the record we shall find that the reason why the Hong Kong and Shanghai Banking Corporation wanted these appellants to execute a mortgage guaranteeing the payment of Aldecoa and Company's debt to said bank was the fact that these appellants *were partners of Aldecoa and Company*. In Exhibit I, which is a letter dated August 24, 1905, from Aldecoa and Company to the Hong Kong bank, we read the following:

"The second point is that which has reference to the private security of Doña Isabel Palet viuda de Aldecoa, and children, which the bank desires. We have given all our attention to this matter, and we are sorry to inform you that we have not obtained an affirmative answer in regard to the giving of security to the bank in spite of our great efforts to obtain the same; we frankly inform you as to the real status of this matter.

"Notwithstanding, we want to call your attention that said guarantees, although they should not be given directly to the bank of your charge, yet they are liable to the same, *inasmuch as they belong to the partners of the firm.*

"In view of the above, we hope that you will take it into consideration and will continue to trust this firm, etc. * * *"

In Exhibit J (Rec. No. 230, p. 83), a letter written to Isabel Palet, the mother of these appellants, by the manager of Aldecoa and Company, we find the following paragraphs:

"* * * since if we do not take a prompt resolution, you, as well as this firm *and the rest of the partners* would have to suffer the fatal consequences."

"* * * in order to avoid any injury to the firm, it (the bank) would be ready to leave the debt standing, *provided it were secured with the mortgage of the private property of the partners in the Philippines.*"

"* * * he, (Mr. Jones, the manager of the bank), answered us that the liquidation would be slow and without intervention from the bank, provided, of course, that the bank should be secured with the *private property of the partners* in the manner already stated, since, if this is not done, the liquidation would be made through the courts, etc."

"Inasmuch as, whether the firm continues doing business freely or goes into liquidation without the intervention of the bank, the *partners of the firm must offer their private property in the Philippines as security*, we believe that this condition must be accepted, etc. * * *"

In Exhibit D-8 introduced in evidence by the bank (Rec., No. 230, p. 90), we read the following in a letter written by the manager of the bank to Aldecoa and Company:

"You will see from same that our board of directors, while very anxious to assist the firm, *insist on the partners using every effort* to help with the same object in view, etc."

Exhibit C, of the Hong Kong bank (Rec. No. 230, p. 29), which is a power of attorney given by Isabel Palet to Don Fernando Zobel y de Ayala to sign the mortgage deed in favor of the bank, we read the following:

"That she grants Don Fernando Zobel y de Ayala,
* * * power of attorney.

"For her and in her name, place and stead and representing her person, right and actions as shareholder of the firm of Aldecoa and Company, domiciled in the City of Manila, *to execute jointly with her sons Don Zoilo and Don Joaquin Ibañez de Aldecoa, who are also members of said firm, the necessary public instrument, etc.*"

By the above exhibits it will be clearly seen that the consideration, motive, and inducement for these appellants to execute the mortgage contract securing the debt of Aldecoa and Company to the bank, was the fact that these appellants were partners of Aldecoa and Company. On that fact, the insistence of the bank was based; on that fact the firm of Aldecoa and Company offered the security of these appellants to the bank and on that ground the mother of these appellants purported to give her consent to these appellants to mortgage their property.

These appellants being told that they were partners of the firm; being also informed that as partners of the firm they would *lose all* their property if they did not mortgage it to the bank to secure the firm's debt; being assured that if they and their mother continued to resist in giving that security, a great disaster would befall them (Rec., No. 230, p. 35), and that if they executed the mortgage the bank would wait five years and that there would be plenty of time to reduce the debt within that period, or perhaps have it fully paid (Rec. No. 230, p. 86), and that this being the only solution to save the partners' property (Rec. No. 230, p. 35), everybody would be pleased (Rec. No. 230, p. 37), they proceeded to execute the mortgage with the consent which their mother had delegated *if necessary* to Mr. Zobel to give.

Article 1274 of the Civil Code reads as follows:

"In contracts involving a valuable consideration, the prestation or promise of a thing or service by the other party is understood as a consideration for each contracting party."

Under this article, the consideration for the contract between these appellants and the bank, in fact the real contract between them, can be stated as follows:

"You," says the bank to these appellants, "are partners of Aldecoa and Company, and as such partners are liable to lose *all* your property if I desire to close up now on that firm. Therefore, if you want me to wait and save your property, secure the firm's debt."

"We," answer the appellants, "as partners of Aldecoa and Company, ask you to give us a chance to save our property, and in exchange we shall mortgage you our property."

The benefit obtained by these appellants by virtue of the bank's service to wait was to save their property.

The benefit received by the bank from the service of these appellants in encumbering their property was to have further security for Aldecoa and Company's debt.

As between Aldecoa and Company and the bank, the consideration was different. In this case the bank said to Aldecoa and Company:

"Give the security of your partners, and I will forego the debt five years."

And Aldecoa and Company answered:

"Here is the security you ask; you forego my debt five years."

On the 5th day of September, 1908, however, the Hon. Chas. J. Lobingier, Judge of the Court of First Instance of Manila, rendered a decision in a certain case entitled "Joaquin Ibañez de Aldecoa *et al.*, plaintiffs, *vs.* Aldecoa and Company, in liquidation, *et al.*, defendants" (Rec. No. 230, p. 76; Rec. No. 231, p. 280), whereby the contract of partnership of Aldecoa and Company was annulled as to these appellants, and it was held that these appellants were not

and could never have been partners of Aldecoa and Company.

Although this judgment was not admitted in evidence by the Court of First Instance at the trial of case No. 231, yet, inasmuch as one of the special defenses set up by these appellants in the foreclosure was the fact that they were not partners of Aldecoa and Company, the Supreme Court, in a separate decision rendered in case No. 231, which decision has become final and against which the Hong Kong Bank has not appealed, held (Rec. No. 231, pp. 393-398) that these appellants were not and could never have been legally partners of Aldecoa and Company.

From that moment, it becomes evident that the reason and the consideration for the mortgage contract of February 23, 1906, ceased to exist, for if these appellants are not, were not, and could never have been partners of Aldecoa and Company, they were in no danger of losing their property as such partners, and no benefit could be derived by them in exchange for their mortgaging their property to the bank.

In onerous contracts there must be a benefit to each of the parties in exchange for a reciprocal service. As soon as this consideration fails, the contract ceases to exist.

It is obvious that, not being partners of Aldecoa and Company, the mortgage deed was based on a false consideration, and therefore was null and void.

Article 1276 of the Civil Code reads as follows:

"The statement of a false consideration in contracts shall render them void, unless it be proven that they were based on another real and licit one."

We insisted on this point when we asked the Supreme Court of the Philippine Islands to reconsider its decision rendered in case No. 230, from which we have appealed to this honorable court. In answer, the Supreme Court said (Rec. No. 230, p. 175):

"It is argued, lastly, that the mortgage contract is void as to the plaintiffs by reason of a lack of consid-

eration. It is asserted that they executed the mortgage under the impression that they were partners in the firm of Aldecoa and Company, when, as decided by a final judgment of the Court of First Instance, they were not such partners. Article 1276 of the Civil Code provides:

"A statement of a false consideration in contracts shall render them void, unless it be proved that they were based on another real and licit one.

"By the same judgment which released the plaintiffs from their obligations as partners of the firm, they were declared creditors of that firm. Here was a valid and subsisting consideration for the mortgage, the creditors' desire to preserve the firm intact in the hope of recovering from it in due course their total credits. It seems clear that it was the object of the mother and the plaintiff children to thus save the business, and it matters little that the plaintiffs were creditors and not partners."

Such a conclusion of the court virtually implies a recognition of our contention that the consideration of the mortgage contract, *i. e.*, the fact that these appellants were partners of the firm of Aldecoa and Company being false, the contract is null and void, under article 1276 of the Civil Code.

But the court, believing that it can find support therefor in the second part of said article 1276, draws the conclusion that inasmuch as the appellants were also creditors of the firm of Aldecoa and Company, here was a valid consideration for the contract.

This conclusion of the lower court has been assigned by us as error number VIII, in the assignment of errors in case No. 230.

We fail to see how, in the face of the provisions of article 1276 of the Civil Code, the court could arrive at such conclusion. It clearly appears from the text of the decision above quoted that the court only makes a gratuitous surmise as to what the contract was based on, and upholds the contract on that surmise.

Is there any *proof* in the record that the contract was *based* on the fact that these appellants were creditors of Aldecoa and Company?

The language of article 1276 is quite definite: "unless it be proven." The article does not say "unless it may appear" or "unless it may be found."

On the other hand, it has been proved and the record shows conclusively that the contract was based on the fact that these appellants were partners, and on no other fact, and unless some other fact be *proved to be a real basis for the contract*, no amount of mere surmises or conjectures can revive that contract which has been rendered void by reason of the falseness of the consideration.

Is it reasonable to suppose that these appellants, as mere creditors of a firm, should risk all their property in the vain hope of saving a comparatively small amount of money owed to them by a firm which as the Supreme Court says in its decision (Rec. No. 231, p. 405) "it was a well-known fact that was insolvent"?

If "it was a well-known fact that the firm was insolvent" and appellants knew it and knowing it mortgaged all their property to secure the obligation of such insolvent company, thus risking all to recover a doubtful handful, then we suggest that the contract is null and void because it was executed by persons of unsound mind, because no person of sound mind could undertake such an obligation.

If the firm was insolvent and the appellants did not know it, and were made to believe that the firm was solvent, then there was deceit, and a consent given under deceit is null and void (article 1269 of the Civil Code).

We beg to submit in view of the foregoing, that the only proved consideration for the mortgage contract being false (and so admitted by the decision of the Supreme Court of the Philippine Islands) and there being no *proof* of any other *real* and *licit* consideration for the contract, said contract is null and void.

POINT TWO.

The contract was executed under a mistake of fact.

This point is nothing but a consequence of the preceding one.

If these appellants executed the mortgage contract in the belief that they were partners of Aldecoa and Company, it is clear that there was a mistake of fact, which vitiated the contract and rendered it null and void.

Article 1265 of the Civil Code provides:

“Consent given by error, under violence, by intimidation or deceit, shall be void.”

And article 1266 states:

“In order that the error may invalidate the consent, it must refer to the substance of the thing, which may be the object of the contract, or to those conditions of the same which should have been principally the cause of its execution.”

The law is quite clear and needs no further comment.

POINT THREE.

The contract was executed under false representations and under insidious machinations which constitute deceit and vitiate the consent.

Article 1265 of the Civil Code provides:

“Consent given by error, under violence, by intimidation or *deceit*, shall be void.”

Article 1269 defines deceit as follows:

“There is deceit when by words or insidious machinations on the part of one of the contracting parties

the other is induced to execute a contract which without them would not have been made."

If we now turn our attention again to Exhibits I, J, K, and D-1 to D-10 (Rec. No. 230, pp. 81, 83, 85, and 85-92), respectively, we shall find therein contained the following facts:

That Aldecoa and Company was heavily indebted to the Hong Kong and Shanghai Banking Corporation:

That the bank wanted immediate payment for its money:

That Aldecoa and Company not having sufficient amount in cash to pay that money asked the bank to grant it time to pay:

That the bank answered that the only way in which it would give that extension would be on consideration of the partners of the firm mortgaging all their property in the Philippine Islands:

That these appellants were made to believe that they were partners in the firm of Aldecoa and Company:

That they were insistently asked by the manager of the bank and the manager of Aldecoa and Company to mortgage their property (Rec. No. 230, pp. 34-35):

That they refused and objected, but were then told that if that was not done, the bank would close upon the firm and that the manager of the bank "would do everything within his power to down all of us, and then we would have no other way but to accept":

That at the same time, words to the same effect were conveyed to the mother of these appellants to get her to give her consent or order these appellants to sign the mortgage contract:

That these appellants and their mother were made to believe that, by signing the contract, Aldecoa and Company would be able to make the reduction of the debt asked by the bank, and their property be saved:

These appellants were made to believe that the bank *would*

open a credit in current account up to the sum of four hundred and seventy-five thousand pesos (₱475,000) against which Aldecoa and Company would continue to draw checks in order to develop and continue its business (Exhibit A, Rec. No. 230, p. 7) :

That said credit of four hundred and seventy-five thousand pesos (₱475,000) *had only been used in part*, thus making those appellants believe that the opening of said credit would enable Aldecoa and Company to dispose still of a considerable amount of money to continue its hemp business; see Exhibit A, paragraph IV, which reads as follows:

“IV. That the Hong Kong and Shanghai Banking Corporation shall keep open in favor of the general mercantile partnership Aldecoa and Company a credit of four hundred and seventy-five thousand pesos (₱475,000) Philippine currency, *part of which has already been used*” (Rec. No. 230, p. 6).

All these facts reveal that if the appellants consented to sign the mortgage contract, they did so on account of the pressure brought to bear upon them and their mother, and the misrepresentations made to them by the managers of the bank and of Aldecoa and Company, as has been proved in the record;

That as matters stood between them (Aldecoa and Company and the bank), the supposed credit of ₱475,000 which, by Exhibit A, was said to be opened was wholly illusory, for the reason that at the time the deed of mortgage was executed, the whole of it, or practically the whole of it, had been used:

“Witness SILVA (Rec. No. 231, p. 158) :

“Q. State what amount was Aldecoa and Company indebted on the 23d day of February, 1906?

“A. Debit ₱474,016.40, without interest.”

That they knew and were aware of the fact that these appellants were not partners of Aldecoa and Company: *This*

has been conclusively shown by the fact that the manager of the bank submitted to the refusal (through her husband) of the sister of these appellants, who like them was included as a partner in the partnership contract, to consent to mortgage her share of the property (Exh. K, Rec. No. 230, p. 85).

We beg to submit that all these facts bring this case under the provisions of articles 1265 and 1269 of the Civil Code, and that by virtue of the provisions of this article the contract executed by these appellants on the 23d day of February, 1906, is null and void.

CHAPTER III.

The Plea of Lis Pendens Should Have Been Sustained.

(11th Assignment of Error in Case No. 231.)

In our eleventh assignment of error to the decision of the lower court in Case No. 231, we stated the following:

The court erred

“In not sustaining the plea of ‘another suit pending’ with respect to the validity of the mortgages, claimed by the plaintiff, which plea was set up as a special defense by the defendants, Joaquin and Zoilo Ibañez de Aldecoa, and in taking jurisdiction of the case and deciding therein a matter submitted for adjudication and not yet finally decided or disposed of; especially in view of the following finding made by the court, to wit:

“That if the final judgment in the former action is that the mortgage be annulled, such an adjudication will deny the right of the bank to foreclose the mortgage’ (Rec. No. 231, p. 412).”

The Supreme Court of the Philippine Islands, in spite of giving in its decision the last quoted statement, does, however, make, on the strength of a number of authorities cited, this further statement (Rec. No. 231, p. 413):

"The above authorities are so analogous in principle to the case at bar that we deem the conclusion irresistible that the pending action to annul the liability of the two appellant children on the mortgages cannot operate as a plea in abatement in the case in hand, which seeks to foreclose these mortgages. The subject-matter and the relief asked for are entirely different. The facts do not conform with the rule and it is therefore not applicable."

With all respect to the Supreme Court of the Philippine Islands, we beg to submit that it has looked more to the letter than to the spirit of rules set down and approved by the authorities quoted in its decision. For brevity's sake we shall refrain here from pointing out the wide difference existing between those authorities cited in the decision of the lower court, where the plea of "another suit pending" was denied, and the present case, No. 231; but to show that our position is correct and is within the rule, we beg to submit some authorities which clearly support our point.

The general rule for the plea of "another suit pending" is that the cases must be the same; that there must be the same parties, or at least such as represent the same interest; there must be the same rights asserted and the same relief prayed for. The identity in these particulars should be that, if the pending case had really been disposed of, it could be pleaded in bar as a formal adjudication of the same matter between the same parties. The test of identity as laid out in Cyc., vol. 1, p. 28, is as follows:

"A plea of pendency of a prior action is not available unless the prior action is of such character that had a judgment been rendered therein on the merits, such a judgment would be conclusive between the parties and could be pleaded in bar of the second action."

But as stated in *Pratt vs. Howard* (109 Iowa, 504) and in *Gwynn vs. Elliott* (123 Iowa, 179):

"It is not always necessary that the parties must be the same in the sense that the same persons or person

are plaintiffs in each of the cases. The general rule is as contended for, but there are several well-recognized exceptions. Thus, where a partition of real estate is desired and suit is brought by one co-owner against the other, it must be manifest that the cross-suit with the same parties reversed to accomplish the same purpose should not be tolerated."

Explaining this test of identity in the same volume of the Cyclopædia we find these words:

"and clearly enough the principle is applicable when successive actions are brought to construe a will. Nor can it be material that in the prior action facts are alleged and relief asked additional to that appearing in the petition in the subsequent action. If the relief sought for in the latter action is obtainable under the issues in the former action so that judgment in the one could be pleaded at bar of the other, an abatement should follow."

In the reports of the decisions rendered by the courts of Louisiana we find many cases which illustrate the doctrine of *lis pendens* and interpret it in the manner that we insist the Supreme Court of the Philippine Islands should have interpreted our plea. In the case of *Stone vs. Tucker* (12 La. Ann., 726) it is stated that a party who has appealed from a judgment homologating the proceedings of a family council cannot at the same time carry on an action to annul these proceedings. The action of nullity will be dismissed on the exception of *lis pendens*.

The case of *Picket vs. Gilmer* (32 La. Ann., 991), is to the effect that a plea of *lis pendens* must prevail in a suit against the surety of an administrator when the issues it presents are pending in opposition to the act of the administrator.

Where the vendee sues to annul a sale on account of fraud and to recover back the price, when sued by the vendor on one of the notes given in payment of the price, he may set up in his defense the pendency of the first suit (*Kline vs. Freret*, 5 La. Ann., 494).

We quote all these authorities to contradict the statement made in the decision of the lower court that inasmuch as the first case No. 230 was a case for the annulment of the contract, and case No. 231 was a case for the foreclosure of the mortgage created by that contract, not being the same sort of an action, and the same relief not being prayed for, one case could not be pleaded in abatement of the other. The above-quoted authorities show conclusively that it is not necessary that the same relief be prayed for or that the identity of the cases be the same. But if those authorities were not clear enough, we find a further case in which this proposition is fully supported in a conclusive manner. It is the case of *Bischoff vs. Theurer* (8 La. Ann., 15, 16). In this case Theurer sued his wife for separation from bed and board and in the same action sought to have annulled certain notes which he alleged had been given by him to her without consideration. He named Bischoff, who held the notes, a party, and charged that Bischoff had notice that the notes were given without consideration. Subsequently Bischoff sued Theurer on the notes and Theurer pleaded *lis pendens*. The court held that the plea was good.

There is such a striking identity between this case and the case at bar that we beg to quote the words of the court in that case and apply them to ours:

"We have no doubt of the right of the defendant to plead the want of consideration of these notes and the bad faith of the holder as he has done, and if the defendants in that suit failed to falsify those pleas and the case should be decided in his favor, the judgment there rendered would form the thing adjudicated in the present litigation. Under the view we took in the case of *Dick et al. vs. Gilmer*, (Annual 520), this is the proper test for the exposition of *litis pendencia*."

We beg to quote finally the case of *Bartholomay Brewing Company vs. Haley* (16 N. Y. App. Div., 485):

"Pendency of action by the buyer for breach of contract of sale may be pleaded in abatement of a subsequent action by the seller for the price of the goods."

The Supreme Court of the Philippine Islands itself recognizes that if final judgment in case No. 230 is to the effect that the mortgages be annulled, such an adjudication will deny the right of the bank to foreclose the mortgages, but the court asks:

"Will a decree holding them valid prevent the bank from foreclosing them. No, certainly not. In such an event the judgment would not be a bar to the prosecution of the present action."

We beg to submit that the Supreme Court of the Philippine Islands fails to apply the test of identity in the proper manner. The test of identity is that any judgment rendered in the former case could be pleaded in bar to the second. If the mortgage were declared null in the first action, the bank would be precluded from foreclosing the mortgage; if the judgment rendered in the first action were to the effect that the mortgage was valid, then the mortgagors could not plead against the validity of the mortgage in this suit of foreclosure, and the judgment in the prior action holding the mortgage valid would be *res judicata* as to that plea. This case, therefore, responding to the test of identity, we respectfully submit that the plea of *lis pendens* should have been sustained.

CHAPTER IV.

The alleged ratification of the contract by Joaquin Ibanez de Aldecoa after attaining his majority does not exist.

POINT ONE.

The error of the lower court in not finding that a new trial should not have been granted in Case No. 230.

We do not pretend to deny the discretionary right of the lower court to grant a new trial as asked for by the defendant bank in Case No. 230 (p. 96) ; but inasmuch as section 145 of the Code of Civil Procedure clearly provides when a new trial should be granted on the ground of newly discovered evidence, we shall point out here that the motion was not in accordance with paragraph 2 of said section 145 of the Code of Civil Procedure, under which the appellee pretended to base his rights for such new trial.

The motion of the appellee bank alleged as a ground for a new trial the existence of "newly discovered evidence necessary for the petitioner, who, notwithstanding all due diligence and care exercised in this case, has not been able to discover and offer same at the trial of this case until now." But such "newly discovered evidence," as the bank calls it, *was not new and had not been recently discovered*, but it was *old*; quite old, and *quite known* to the defendant bank. Furthermore the bank *did not exercise due care* nor due diligence to find such evidence but was on the contrary *intentionally* and knowingly *negligent* in presenting it. The person signing the affidavit accompanying the motion for a new trial was Mr. Charles C. Cohn, one of the attorneys for the bank. The document which he alleged to present as new evidence appears to be a deed dated June 13, 1907, that is to say, six months before the Case No. 230 was filed in court.

Said document, dated June 13, 1907, accompanying said affidavit (Rec. No. 230, p. 98), appears to be signed before a notary public, also of the firm of the bank's attorneys. Could it be alleged that a document executed shortly before this case was filed and before a notary public belonging to the office of the attorneys of defendant bank, and where Mr. Charles C. Cohn, the attorney for the bank, and the one representing the bank at the trial of Case No. 230, was a witness, is evidence newly discovered? But this is not all. We are going to accept for the sake of argument that said document might be newly discovered evidence in favor of the defendant bank. Could it be held that the defendant bank as well as its attorneys used all due care and diligence to present that evidence at the trial of the case? They could hardly sustain that, because in Case No. 6087 before the Court of First Instance of Manila, presented in evidence at the trial Case No. 231 (p. 233), the same attorney for the Hong Kong and Shanghai Banking Corporation and the Hong Kong Bank itself in its answer to the complaint filed in said Case No. 6087 set forth the document in question, which in Case No. 6086 is alleged to be "newly discovered evidence."

Attention must also be called to the fact that the answer in said Case 6087 had been filed in court on February 17, 1910, and the motion for a new trial was made on April 12, 1910 (Rec. No. 231, p. 251; Rec. 230, p. 96). The trial of Case No. 230 took place on the 21st day of July, 1909, but it was not decided until March 28, 1910, so that there is positive proof in the record that at least a month before the decision of the lower court in Case No. 230, said newly discovered evidence had been handled and used by the defendant bank and its attorneys and they did not bring it to the attention of the court until three months later, and after the decision had been already rendered. Is that using all due care and diligence within the meaning of section 145 of the Code of Civil Procedure? All these facts were duly

alleged by the attorney for these appellants and sworn to and filed in opposition to the motion (Rec. No. 230, pp. 101, 103, 105), but the lower court disregarded the objection of these appellants and granted the new trial. But the sworn statement of the attorney for these appellants was not contradicted and no evidence offered to discredit it. Therefore, if such evidence was not newly discovered evidence and due diligence was not exercised to present it at the trial and before the decision was rendered, it is evident that the document of June 13, 1907, should not have been admitted nor the new trial granted. For this reason the second decision of the Court of First Instance should have been reversed as to the appellant Joaquin Ibañez de Aldecoa.

The third requisite for granting a motion for a new trial on the ground of newly discovered evidence is, according to section 145 of the Code of Civil Procedure, that said new evidence be material to the party making the application. This requisite was lacking. The defendant bank in its answer to the complaint, did not either in the first answer or in the amended answer superseding the first one, allege that the mortgage deed referred to in the complaint should have been confirmed or ratified by appellant Joaquin Ibañez de Aldecoa through any act executed after the signing of the mortgage deed of February 23, 1906. Nor did the bank amend its answer to include that allegation after said so-called newly discovered evidence was presented.

The appellee confined itself to making a general denial of the facts alleged in the complaint and therefore that piece of evidence which was alleged as material was unnecessary and irrelevant.

We submit therefore that the judgment of the Court of First Instance as to the appellant Joaquin Ibañez de Aldecoa should have been reversed for the reason that a new trial was improperly granted and that the evidence introduced was irrelevant and immaterial to the issues of the case under the pleadings of the same.

POINT TWO.

There was no ratification of the contract.

Article 1261 of the Civil Code provides:

"There is no contract unless the following requisites exist:

"(1) the consent of the contracting parties;

"(2) the definite object with may be the subject of the contract;

"(3) the cause for the obligation which may be established."

Article 1310 provides:

"Only contracts having all the requisites mentioned in article 1261 can be confirmed."

Article 1311 provides finally that:

"The confirmation can be made either expressly or in an implied manner. It shall be understood that there is an implied confirmation when, *being aware of the cause of nullity*, and such cause having ceased to exist, the person who may have a right to invoke it should execute an act which *necessarily implies* his wish to renounce such a right."

We have argued heretofore that the consent of the appellant Joaquin Ibañez de Aldecoa was null and void because under article 1265 consent given by error, under violence or by intimidation or deceit, shall be void, and his consent to the deed of February 23, 1906, was given by error, believing himself a partner of the firm of Aldecoa and Company. We have also argued that said consent had been given by deceit, which was made by the words and false representations on the part of the managers of the firm of Aldecoa and Company and of the Hong Kong Bank. We have also

argued heretofore, and shown, that there was no cause for the obligation and no consideration for the mortgage on the part of these appellants. Therefore the lack of two of the requisites to make contracts valid made that contract null, and under section 1310 the same could not be confirmed because only those which have all the requisites mentioned in article 1261 can be confirmed.

By reading the document signed by Don Joaquin Ibañez de Aldecoa on the 13th day of June, 1907 (Rec. No. 230, p. 98), there appears nowhere direct confirmation of the contract of February 23, 1906, because although this latter contract is made part of said document or memorandum of agreement of June 13, 1907, there is no statement by Joaquin Ibañez de Aldecoa saying that he confirms the former one.

The bank contends that by making the first contract part of the second there has been an implied confirmation, but such contention cannot be good:

Because for such implied confirmation three things are necessary: (a) that the party confirming the contract be aware of the cause of nullity; (b) that the cause shall have ceased to exist; and (c) that the act will necessarily imply his wish to renounce the nullity.

In the case of Joaquin Ibañez de Aldecoa he was not aware of the nullity; he continued to believe himself a partner of Aldecoa and Company; he was still under the same influence of the managers of Aldecoa and Company and of the bank, the manager of the bank being still master of the situation in regard to the affairs of Aldecoa and Company.

The lack of consideration still existed inasmuch as that contract was not to his benefit in any way, form or manner, as the document itself will show. The partnership contract had not been declared as yet null and void, therefore the cause of nullity had not ceased to exist.

All the considerations which have been made in regard to the nullity of the mortgage contract, and as argued under

chapter II of this brief, can be alleged in support of the nullity of the alleged confirmation by Joaquin Ibañez de Aldecoa, but we respectfully submit that under the provisions of sections 1310 and 1269 of the Civil Code, the contract of February 23, 1906, could not be confirmed or ratified.

POINT THREE.

If there was any confirmation it was granted under a mistake of fact.

On the date that the memorandum agreement of June 13, 1907, was executed, the contract of partnership of Aldecoa and Company had not been as yet declared null as to this appellant; this appellant continued to believe himself a partner of Aldecoa and Company and therefore subject to a personal liability as such partner; in the belief that he was such a partner, he had to submit himself to whatever conditions the manager of the bank should care to impose on the partners, under the threat that if they were not complied with, he would fall upon the firm, and consequently upon the individual partners thereof; the action of nullity did not start until the month of January of the year 1908.

All the conditions constituting the error which vitiated the contract of February 23, 1906, still existed at the time the contract of June 13, 1907, was executed. If there was no valid consent to the former contract there could be no valid consent to the latter. We reproduce here all our arguments and authorities contained at pp. 96-103, of this brief and respectfully submit that under the provisions of article 1265 of the Civil Code the alleged confirmation was null and void.

III.

THE APPEAL OF ISABEL PALET Y GABARRO.

**BRIEF OF THE ARGUMENT IN THE APPEAL OF
ISABEL PALET Y GABARRO.**

POINT ONE.

There was no breach of the contract of February 23, 1906.

(a) The debt was paid in the manner provided for in the contract.

The contract provides that by January 1, 1911, the credit of ₱475,000 should have to be reduced to ₱225,000. The record shows that if the bank had credited it, according to other contracts made subsequently to that of February 25, 1906, Aldecoa and Company's debt should only amount to ₱103,049.23 less than the sum required.

(b) The liquidator of Aldecoa and Company had no power or authority to execute the contract of August 30, 1907.

The contract of June 13, 1907, expressly provided that certain shares of stock valued at ₱160,000 would be paid into the bank. On August 30, 1907, the liquidator and the bank without the knowledge or consent of this appellant instead of executing a transfer of the shares, executed only a mortgage.

Under articles 228 and 231 of the Code of Commerce the liquidator could not modify the conditions of the contract of June 13, 1907.

Under the principle "equity regards as done that which ought to be done," the mortgage of the shares must be treated as a sale of the shares.

The bank cannot be allowed to profit by its own breach of the contract of June 13, 1907.

POINT TWO.

The liability of Isabel Palet y Gabarro as surety of Aldecoa and Company has been extinguished

(1) By the fulfillment of the obligation.

(2) By the novation of the contract between the principal debtor and the creditor without the knowledge and consent of the surety.

POINT THREE.

The judgment entered runs against Aldecoa and Company and Isabel Palet y Gabarro jointly and severally and does not express the subsidiary character of the liability of this appellant (if she is under any liability).

POINT FOUR.

The surety cannot be compelled to pay a creditor until application has been previously made of all the property of the debtor.

The contract of February 23, 1903, did not make this appellant jointly and severally liable with Aldecoa and Company, as surety of the latter.

IV.

ARGUMENT ON THE APPEAL OF ISABEL PALET Y GABARRO.

POINT ONE.

(Second, ninth, and third errors.)

THERE WAS NO BREACH OF THE CONTRACT OF FEBRUARY 23, 1906.

(a) *The debt was paid in the manner provided for in the contract.*

The contract of February 23, 1906, which is the subject-matter of this action, and the alleged breach whereof is the ground for the foreclosure proceedings instituted by the Hong Kong and Shanghai Banking Corporation against this appellant, Isabel Palet and her two sons, Zoilo and Joaquin Ibañez de Aldecoa (Case No. 231), reads in part as follows:

"VII. The credit in current account which the Hong Kong and Shanghai Banking Corporation has opened in favor of the general mercantile partnership Aldecoa and Company, shall continue in force during the term of this agreement, provided that said debtor company shall continue to make use of said credit through checks issued against the said Bank, with the sole object of applying those funds to the purchase of hemp, rice, and other products related with the object of said partnership, and subject to the obligation on the part of the debtor, Aldecoa and Company, to reduce its debit balance down to the sum of FOUR HUNDRED AND TWENTY-FIVE THOUSAND PESOS (P425,000) on or before December 31, 1906, and to continue reducing said debit balance at the rate of at least FIFTY THOUSAND PESOS (P50,000) per year until said debit balance be reduced to the sum of TWO HUNDRED AND TWENTY-FIVE THOUSAND PESOS (P225,000) Philippine currency, on January 1, 1911, on which event the creditor bank reserves to itself the right to enter into new stipula-

tions with the debtor company for the total payment of its debt, provided, that the yearly instalments for the reduction of the capital shall begin to run from the 1st day of January, 1906, so that the first FIFTY THOUSAND PESOS (P50,000) Philippine currency, shall be paid on December 31, 1906, and so on, until this stipulation is complied with, that is to say, for the sake of clearness:

(a) Up to and until December 31, 1906, the credit shall be of four hundred and seventy-five thousand pesos (P475,000) Philippine currency.

(b) Up to and until December 31, 1907, the credit shall be of four hundred and twenty-five thousand pesos (P425,000) Philippine currency.

(c) Up to and until December 31, 1908, the credit shall be of three hundred and seventy-five thousand pesos (P375,000) Philippine currency.

(d) Up to and until December 31, 1909, the credit shall be of three hundred and twenty-five thousand pesos (P325,000) Philippine currency.

(e) Up to and until December 31, 1910, the credit shall be of two hundred and seventy-five thousand pesos (P275,000) Philippine currency.

So that on January 1, 1911, the credit shall not be for a greater sum than two hundred and twenty-five thousand pesos (P225,000) Philippine currency." (Rec. No. 231, p. 11).

On the 30th day of November, 1906, Aldecoa and Company mortgaged in favor of the Hong Kong and Shanghai Banking Corporation the debts owing to said Aldecoa and Company by its provincial debtors, among them that of one Salustiano Zubeldia, who at that time owed the company the sum of One hundred and twenty-one thousand, seven hundred and nine pesos and fifty-three cents (P121,709.53), This debt of Salustiano Zubeldia was secured by a mortgage on his real property and merchandise valued at one hundred and seventy-seven thousand seven hundred and sixty-nine pesos and ninety-five cents (P177,769.95) Philippine currency (Rec. No. 231, pp. 112-115) in favor of Aldecoa and Company, which firm, on the 22d day of December, 1906,

transferred all its rights therein in favor of the Hong Kong Bank as a further security for the credit opened in favor of said Aldecoa and Company by virtue of the document of February 23, 1906 (*supra*), (Rec. No. 231, pp. 112-118).

This credit which the firm of Aldecoa and Company had against said Salustiano Zubeldia, there being no time fixed for payment thereof, could become due and payable according to article 313 of the Code of Commerce in force in the Philippine Islands, thirty days after demand. Said article 313 reads as follows:

"In loans for an indefinite period, or in which no due time has been fixed, payment cannot be exacted of the debtor until thirty days have elapsed, to be counted from the date of the notarial demand which may have been made."

On the 16th day of January, 1907, the manager of the bank, who on January 4 of the same year had advised Mr. Zubeldia that his debt to the firm of Aldecoa and Company had been *assigned* to the bank, executed on behalf of said bank with Zubeldia a document by which the bank permitted said Zubeldia to pay his debt in quarterly instalments of not less than three thousand pesos (₱3,000) each (Rec. No. 231, Defendant's Ex. 1, p. 222).

To this document Aldecoa and Company was not a party nor is there anything appearing therein to that effect. It is a contract exclusively between the Hong Kong Bank and Zubeldia in regard to Zubeldia's debt to Aldecoa and Company, and assigned by Aldecoa and Company to the bank. We respectfully submit that by this contract (Defendant's Ex: L, Rec. No. 231, p. 222) the bank became by law, and considered itself, subrogated as to the rights of Aldecoa and Company to this credit, for which reason Aldecoa and Company should have been credited at once with the full amount thereof, to wit: one hundred eighteen thousand, six hundred

twenty-one pesos and twenty-three cents (₱118,621.23), Philippine currency, which is the amount of the debt of said Zubeldia at that time. With the more reason, when Mr. Urquhart, the liquidator of Aldecoa and Company, tells us (Rec. No. 231, p. 171) that he refused to sign that document:

"A. * * * Zubeldia is the only instance in which the bank, as far as I remember just now, in which the bank gave *plazo* (time to pay).

"Q. And that was with your consent?

"A. No, sir. I had refused to sign that *escritura* (document). I agreed afterwards in 1909,"

and that agreement of Urquhart's in 1909 implies that the whole amount of Zubeldia's debt was to be considered as paid, as far as Aldecoa and Company was concerned. It is as follows (Rec. No. 231, p. 215), Ex. CC:

"MANILA, March 22, 1909.

To the Hong Kong and Shanghai Banking Corporation, Manila.

GENTLEMEN: Your letter of the 19th instant to hand, and although the proposition made therein to us is not as good or as advantageous for us as that which you made to us on the 8th instant, however, to show our good will we have no objection to accepting the same, it being therefore understood that you propose and we accept the following:

(1) We accept ninety-one thousand eight hundred fifty-three pesos and fifty-seven cents (₱91,853.57) in total payment of Zubeldia's debt, which debt shall be paid by said Mr. Zubeldia in quarterly installments of three thousand pesos (₱3,000) each.

(2) You shall credit us in our account sixteen thousand two hundred twenty-one pesos and seventy-five cents (₱16,221.75) as interest of Mr. Zubeldia's debt until December 31, 1908.

(3) From said date, December 31, 1908, you shall credit our account quarterly with the interest which

may correspond to us of Mr. Zubeldia's debt at the rate of 8 per cent.

Hoping that you shall find this to your satisfaction, we again remain,

Yours very sincerely,

(For Aldecoa and Company in liquidation),

WILLIAM URQUHART."

That Zubeldia considered himself no more a debtor of Aldecoa and Company, but of the bank, is shown clearly by the letters which he wrote to the bank on January 29, 1907 (Rec. No. 231, p. 292). That the bank considered itself the creditor of Zubeldia is shown by a letter written to Zubeldia on February 8, 1907 (Rec. No. 231, p. 294), in answer to the above, wherein we read the words "while you fulfill your obligation to this bank in due form."

We have, then, that by January 16, 1907—that is to say, 16 days after Aldecoa and Company had entered into its period of liquidation—the sum of one hundred eighteen thousand, six hundred and twenty-one pesos and twenty-three cents (₱118,621.23), Philippine currency, had already been paid on account of the obligation contracted by virtue of the deed of credit of February 23, 1906. It is immaterial whether or not the amount was actually credited to Aldecoa and Company by the bank; it is sufficient that it should have been so credited.

On the 13th day of June, 1907 (Rec. No. 231, p. 255, Plaintiff's Ex. V), Aldecoa and Company in liquidation, this appellant, Isabel Palet, and her two sons (although as to the latter said agreement is said to be null and void), executed in favor of the Hong Kong and Shanghai Banking Corporation an obligation whereby they promised that as soon as they should recover from one A. S. Macleod (formerly manager of Aldecoa and Company), in a certain action which was to be filed against said A. S. Macleod, certain shares of stock of the Pasay Estates Company, Limited, valued in the sum of one hundred and sixty thousand pesos (₱160,000),

Philippine currency, they "*shall be applied in full to the payment pro tanto* of the sum which the firm of Aldecoa and Company or Aldecoa and Company in liquidation owes to the party of the third part (the bank), deducting only from said proceeds the necessary expenses of said action, including the fees of the attorneys who are to represent said plaintiffs,* the balance to be delivered to the creditor bank for the purpose above mentioned."

Said shares of stock became the property of Aldecoa and Company, and pursuant to the aforesaid document of June 13, 1907, they should have been delivered to the bank and applied *pro tanto* to the payment of Aldecoa and Company's indebtedness; but instead of accepting them *in payment*, the bank only took them as a *mortgage security*, and accepted them only as such (Ex. D, Rec. No. 231, p. 25). Had the agreement of June 13, 1907, been complied with; had the bank accepted said shares of stock in payment, and not as security for the debt, the indebtedness would have been reduced one hundred and sixty thousand pesos (P160,000) more.

On the 4th day of March, 1909, Aldecoa and Company in liquidation, ceded, transferred and assigned to the Hong Kong bank and the latter accepted a certain credit against one Martin Achaval, amounting to twenty-two thousand three hundred fifty-two pesos and sixty-three cents (P22,352.63) (Rec. No. 231, p. 214); yet that credit of Achaval's was not credited to Aldecoa and Company until January 26, 1912, one year after this action was commenced (Rec. No. 231, p. 158) and almost *three years after the cession had been made*. This goes to show that the bank in the matter of Aldecoa and Company did whatever it liked without paying any attention to the rights of Aldecoa and Company or of its partners. In addition to these credits, which should have been credited in full and were not, by Exhibit Q (Rec. No. 231, p. 202),

*P5,000 (Rec. No. 231, p. 180).

we find that other amounts were paid in by Aldecoa and Company or its debtors to the bank as follows:

A. Garchitorena.....	₱6,964.62
F. Rodriguez.....	4,200.00
Tremoya Hermanos.....	2,029.66
Widow and sons of Escano.....	63,524.47
Acordagio Coechea Hermanos.....	2,124.28

Making a total of..... ₱78,843.03

If we add this ₱78,843.03 to Zubeldia's credit of ₱118,621.23, or if we are to accept the amount given in Exhibit CC (Rec. No. 231, p.

215) of..... } ₱78,843.03
 } ₱91,853.57

to Achaval's credit of..... 22,352.63

and finally the value of the shares of stock of the Pasay Estates Company, Limited, which the bank had agreed to accept in part payment

₱160,000.00

we have a total of..... ₱353,049.23

which deducted from..... ₱475,000.00

leaves a balance of..... ₱121,950.77

which is one hundred three thousand forty-nine pesos and twenty-three cents (₱103,049.23), Philippine currency, less than the amount to which the credit was to be reduced by January 1, 1911, according to clause 7 of Exhibit A (Rec. No. 231, p. 11).

And even were we to deduct this amount, not from the credit allowed in the deed, but from the real balance which Aldecoa and Company owed on the 31st day of December, 1906, and which according to the bank (Rec. No. 231, p. 152) amounted to five hundred sixteen thousand five hundred and seventeen pesos and ninety-eight cents (₱516,517,-

98), less the aforesaid credit of three hundred fifty-three thousand forty-nine pesos and twenty-three cents (P353,049.23), we would have one hundred fifty-five thousand four hundred sixty-eight pesos and seventy-five cents (P163,468.75), or sixty-one thousand five hundred thirty-one pesos and twenty-five cents (P61,531.25) less than the credit allowed for January 1, 1911.

(b) The liquidator of Aldecoa and Company had no power to execute the contract of August 30, 1907.

It will be argued that inasmuch as Aldecoa and Company in liquidation was a party to the agreement wherein the shares of stock of the Pasay Estates Company, Limited, were mortgaged to the bank, this appellant as partner of Aldecoa and Company is bound by said contract and therefore cannot claim now that the one hundred and sixty thousand pesos (P160,000), the value of said shares of stock should be deducted from the amount of the indebtedness, and that this being so the contract of February 23, 1906, was violated, inasmuch as on January 1, 1911, the amount of said debt was greater than that which had been stipulated by said contract that it should be; and inasmuch as upon said violation the whole of the debt became due and payable at once, she as a general collective partner of Aldecoa and Company, regardless of the fact whether or not she was also a surety, becomes jointly liable with all her property for the debt of the firm. And it will be further argued that the judgment against Aldecoa and Company having become final by reason of the fact that said firm has not appealed from the decision of the lower court, said judgment is also final as to her in her capacity as partner of Aldecoa and Company.

To this last argument we shall answer, quoting article 1148 of the Civil Code, which provides as follows:

“Article 1148. A joint debtor may utilize, against claims of the creditor, all the exceptions arising from

the nature of the obligation and those which are personal to him. Those personally pertaining to the others may be employed by him only with respect to the share of the debt for which the latter may be liable."

She, therefore, as a joint debtor,* has the right to interpose any defense against the obligation in her own right and she did so from the beginning in her special defense (Rec. No. 231, p. 144).

As to the first part of the argument this appellant has, from the beginning, denied that the agreement executed by and between William Urquhart as liquidator of Aldecoa and Company, and the Hong Kong and Shanghai Banking Corporation, on August 30, 1907, is valid. In her special defense set forth in her answer to the complaint this appellant alleged:

(1) The plaintiff bank in violation of the articles and stipulations contained in the instrument of February 23, 1906, which is mentioned in and made part of the complaint as Exhibit A, in entering into an agreement with the liquidator of that firm *without said manager and liquidator having power or authority sufficient to do so*, not only consented in that the debt of Aldecoa and Company should go beyond the limit agreed to with exponent by the agreement of February 23, 1906, but *voluntarily renounced applying to the payment of said debt the property of Aldecoa and Company which come into its hands* for such purpose, and entered into agreements and stipulations with the debtors Aldecoa and Company extending the time of payment of their debts which were to be applied to the reduction of that credit.

(2) * * *

(3) That this conduct of plaintiff, inspired by the desire of benefiting itself by the accumulation of interest to its credit, without decreasing the securities

*We argue this from the point of view of this appellant being a partner, and not a surety.

given, but on the contrary increasing them regularly, has resulted to the damage of this defendant, both as general partner and as mortgage guarantor of Aldecoa and Company.

(4) That by the conduct and behaviour of plaintiff bank as creditor of Aldecoa and Company, this firm and therefore this defendant as subsidiary debtor have been prevented from reducing and meeting the credit in due time on the terms agreed upon and are prevented now from converting those values, rights, and actions of Aldecoa and Company into cash in order to comply with the agreement of February 23, 1906.

Article 228 of the Code of Commerce providing for the duties and powers of liquidators reads as follows:

“From the time an association is declared in liquidation the right of the managing members to make new contracts and obligations shall cease, their power being limited as liquidators to collecting the credits of the association, to extinguishing obligations previously contracted as they fall due, and to realizing pending transactions.”

Article 231 of the same Code provides:

“The liquidators shall be liable to the members for any loss suffered by the common funds on account of fraud or serious negligence in the discharge of their duty, but are not understood hereby as being authorized to transact business nor to *compromise the common interest unless the members have expressly granted them these privileges.*”

As will be seen from these articles, William Urquhart had no authority to undertake any further obligations or execute any new contract modifying the obligations of the contract either by the partnership itself or by the partners on behalf thereof.

It will be said that the partners gave Urquhart (Ex. J, Rec. No. 231, p. 198) power to contract with the Hong Kong

Bank. Such an assertion is not entirely correct. The power granted to Urquhart by the partners of Aldecoa and Company reads as follows:

"He being also authorized to sign and execute whatever documents either public or private be necessary or convenient to carry out any agreement entered into by Aldecoa and Company with the Hong Kong and Shanghai Banking Corporation."

It does not say any "agreement entered into by Aldecoa and Company in liquidation." It would be seen that Urquhart is not empowered to make new contracts stipulating new conditions or modifying the nature of obligations contracted. Is the contract of August 30, 1907, a contract to carry out any agreement entered into between Aldecoa and Company and the Hong Kong and Shanghai Banking Corporation? The strongest evidence that Urquhart had no power is, that in order to execute the document of June 13, 1907 (Rec. No. 231, p. 205), concurrence of the partners (even those who at the time were believed to be partners) was necessary. In view of that contract of June 13, 1907, and of the power of attorney executed in favor of Urquhart as liquidator, the only thing he could do was to pay into the bank the full value of the shares of stock of the Pasay Estates Company, Limited. He had no power of modifying that contract. Said contract of August 30, 1907, as such, that is as a mortgage contract, is void, and has no effect whatever as to the rights of this appellant.

"Equity regards that as done which ought to be done," and therefore that contract, if it must be considered at all, must not be considered as a mortgage contract, but as the cession of shares of stock for the purpose of determining whether or not the conditions of the contract of February 23, 1906, have been complied with in regard to the amount to which the credit of Aldecoa and Company should have been reduced by January 1, 1911.

Finally, we beg to call to the attention of this honorable court that the Hong Kong Bank cannot be allowed to profit by its own breach of contract of June 13, 1907, which said bank executed personally with this appellant, and whereby it agreed that the full value of the shares of stock of the Pasay Estates Company, Limited, was to be applied to the payment *pro tanto* of the firm's indebtedness.

We respectfully submit that inasmuch as the contract of February 23, 1906, was more than fulfilled on the part of Aldecoa and Company, this appellant, Isabel Palet, although not denying her personal liability as partner of Aldecoa and Company in accordance with the provisions of article 127 of the Code of Commerce, does, however, deny any liability as such partner to the Hong Kong and Shanghai Banking Corporation by reason of the failure to comply with the obligations of the contract of February 23, 1906. The Supreme Court of the Philippine Islands therefore erred in making the following findings, to wit:

"This is especially true in the case under consideration for the reason that it was a well-known fact that Aldecoa and Company was insolvent."

"We find nothing in the record showing directly or indirectly that the bank has at any time granted any extension in favor of Aldecoa and Company for the performance of its obligation."

And on the strength of Exhibit G (Rec. No. 231, pp. 42-45) and in the absence of any evidence in the record to the effect that the bank complied with the duties devolving upon it by virtue of said document Exhibit G, we assert that the Supreme Court of the Philippine Islands erred in not finding that the bank could not institute proceedings to foreclose the mortgage alleged to have been executed by this defendant without first having instituted proceedings, obtained judgment and exhausted all its remedies to collect and reduce to cash all the assets of Aldecoa and Company.

POINT TWO.

The liability of this appellant Isabel Palet as surety of Aldecoa and Company has been extinguished.

In view of the foregoing discussion, we beg to submit that the obligation of this appellant as surety of Aldecoa and Company has been extinguished:

(1) By the fulfillment of the obligations by the principal debtor.

(2) By the novation of the contract between the principal debtor and the creditor without the knowledge or consent of the surety.

We reproduce here all our remarks and arguments contained in the foregoing points, because they are applicable to the first part of our contention here; and if said arguments are conclusive, as we believe they are, in regard to the alleged liability of this appellant as partner, with the more reason they must be if we consider this appellant not as a partner but as a surety.

As an alternative contention we allege that the contract of February 23, 1906, has been novated and by virtue of said novation this appellant's obligation has been extinguished.

Again we must turn to the contracts of February 23, 1906, June 13, 1907, and August 30, 1907. By the contract of February 23, 1906, it was stipulated that the credit of Aldecoa and Company which at that time stood in the sum of four hundred seventy-five thousand pesos (P475,000) was to be reduced yearly at least in the sum of fifty thousand pesos (P50,000). This contract of February 23, 1906, was supplemented by that of June 13, 1907, in which the debt was to be reduced one hundred sixty thousand pesos (P160,000) by applying to it the full value of the shares of stock of the Pasay

Estates Company, Limited, as soon as they were recovered from A. S. Macleod as provided for. This contract of June 13, 1907, was made part of the contract of February 23, 1906. By the contract of August 30, 1907, we find that both the bank creditor and the liquidator of Aldecoa and Company failed to comply with one of the conditions expressly provided for in the contract of guarantee by not applying the full value of the shares of stock of the Pasay Estates Company, Limited, to the payment *pro tanto* of Aldecoa and Company's debt. This was conclusively a breach of the conditions of suretyship agreed upon between this appellant and the bank and the principal debtor, Aldecoa and Company, and by that breach the contract of suretyship has been released.

Article 1156 of the Civil Code provides

"Obligations are extinguished * * * by novation."

Article 1203, which is the first article of section 6 of chapter 4, title 1 of book 4 of the Civil Code, entitled "Novation," provides that

"Obligations may be modified

(1) By the change of object or principal conditions."

The record shows by the evidence given in this case that the Hong Kong bank by agreements made, first, with the manager of Aldecoa and Company, and later, with the liquidator of this firm, without the knowledge and consent of this appellant, allowed the credit granted by the document of February 23, 1906, extended at a larger sum than provided for in said contract. See Rec. No. 231, p. 152, where the book-keeper of the bank testified that the debit balance of Aldecoa and Company on the 31st day of December, 1906, instead of being reduced to four hundred and twenty-five thousand pesos (\$425,000), amounted to five hundred and sixteen

thousand five hundred seventeen pesos and ninety-eight cents (P516,517.98).

Finally, section 1851 of the Civil Code provides that:

“Extensions granted to the debtor by the creditor without the consent of the surety extinguishes the security.”

POINT THREE.

(Seventh Error.)

In the event of our contentions in the first point raised in this appeal being not sustained, we allege that the lower court erred in ordering that the appellee recover from Aldecoa and Company and Isabel Palet y Gabarro jointly and severally without directing for the benefit of the appellant Isabel Palet that the property of Aldecoa and Company should first be exhausted before the appellee should be entitled to have recourse in the property of this appellant for the satisfaction of the judgment.

Inasmuch as the bank, the appellee, in reference to this error at page 19 of its brief says:

“It is true that the judgment entered by the clerk runs against Aldecoa and Company and Isabel Palet jointly and severally and does not in terms express the subsidiary character of the liability of this defendant. This is no doubt due to a mere clerical error in the entry of the judgment and the appellant bank does not oppose such modification as may be necessary to the end that the judgment against this appellant be brought into harmony with the expressed opinion of the lower court.”

We believe that there is nothing further to be argued as to this particular point.

POINT FOUR.

(Fifth and Seventh Errors.)

The fifth paragraph of the assignment of errors in Case No. 231 reads as follows:

"In making the following finding:

"If two or more persons are debtors *in solidum* of a third person, and one or more of such debtors constitute mortgages on their real property situated in the jurisdiction of the court, the creditor, in case his obligation is not paid at maturity, may include all solidary debts in the same suit and secure a joint and several judgment against them, as well as judgments of foreclosure upon the respective mortgages."

"In ordering that the plaintiff corporation recover from Aldecoa and Company and Isabel Palet y Gabarro jointly and severally, without directing for the benefit of appellant, Isabel Palet y Gabarro, that the property of Aldecoa and Company should be exhausted before the plaintiff firm should be entitled to have recourse to the property of said Isabel Palet y Gabarro for the satisfaction of the judgment."

In support of these two errors, we beg to allege section 830 of the Civil Code, which reads as follows:

"The surety cannot be compelled to pay a creditor until application has been previously made of all the property of the debtor";

and if it is true that article 831 says that this application cannot take place if the surety has bound himself jointly with the debtor, or in case of bankruptcy of the debtor, no such two instances have occurred in this case, because by the contract of February 23, 1906, this appellant has not made herself jointly liable with Aldecoa and Company, and we have also proved that Aldecoa and Company had placed in

the hands of the bank sufficient means for the latter to pay itself, and therefore cannot be regarded as an insolvent.

V.

Conclusion.

In view of the foregoing, we respectfully submit these appeals to this honorable court. We respectfully submit that any one of the points presented in this brief, both in the appeal of Joaquin and Zoilo Ibañez de Aldecoa, as in that of Isabel Palet y Gabarro, is a sufficient ground for a reversal of the judgment of the court below, and in closing this brief we respectfully ask this honorable Supreme Court to reverse the decision of the lower court with the costs against the appellee.

Respectfully submitted,

ANTONIO M. OPISSO,
Attorney for the Appellants.

FEBRUARY 1, 1918.

FILED
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JAMES D. HARRIS
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1917.
(25,411.)

ZOILLO IBÁÑEZ DE ALDECOA Y PALET AND
JOAQUIN IBÁÑEZ DE ALDECOA Y PALET,
Appellants,

v.

No. 230.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,
Appellee,

and

(25,412)

JOAQUIN IBÁÑEZ DE ALDECOA Y PALET,
ZOILLO IBÁÑEZ DE ALDECOA Y PALET
AND ISABEL PALET Y GABARRO,
Appellants,

v.

No. 231.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,
Appellee.

BRIEF FOR APPELLEE.

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Supreme Court of the United States.

OCTOBER TERM, 1917.

(25,411.)

ZOILO IBAÑEZ DE ALDECOA Y PALET AND
JOAQUIN IBAÑEZ DE ALDECOA Y PALET,
Appellants,

v.

No. 230.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,
Appellee,

and

(25,412)

JOAQUIN IBAÑEZ DE ALDECOA Y PALET,
ZOILO IBAÑEZ DE ALDECOA Y PALET
AND ISABEL PALET Y GABARRO,
Appellants,

v.

No. 231.

THE HONG KONG & SHANGHAI BANKING
CORPORATION,
Appellee.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

These actions have been consolidated by order of the Court on motion by appellee and will be briefed together.

Case No. 25,411 was commenced by a complaint by Zoilo Aldecoa and Joaquin Aldecoa against The Hong Kong

& Shanghai Banking Corporation, Aldecoa & Company in liquidation, and Isabel Palet y Gabarró for the cancellation of a certain deed of mortgage executed by the plaintiffs jointly with Aldecoa & Company, and Isabel Palet to secure the payment of an indebtedness of Aldecoa & Company to The Hong Kong & Shanghai Banking Corporation. The original complaint (Rec., p. 1, Case 25,411) was filed January 25, 1908. It was superseded by an amended complaint (Rec., p. 43, Case 25,411) filed November 17, 1908, which the defendant bank answered (Rec., p. 52, Case 25,411) after unsuccessfully demurring. The answer is a general denial. Answers were also filed (Rec. p. 49) by Isabel Palet and by Aldecoa & Company (Rec. p. 52).

The case was tried before the Hon. A. S. Crossfield, one of the judges of the Court of the First Instance of Manila. On March 28, 1910, the trial judge rendered his decision declaring the mortgage in question to be null and void as to Joaquin and Zoilo Aldecoa and decreeing the cancellation of its registration. The defendant bank moved for a new trial (Rec. p. 96, Case 25,411) on the ground of newly discovered evidence, which motion was granted by the Court by order dated April 27, 1910 (Rec., p. 106). After the rehearing the trial judge, on November 27, 1911, entered judgment (Rec., p. 112, Case 25,411) holding that the mortgage in question was valid as to the plaintiff Joaquin Aldecoa but void as to the plaintiff Zoilo Aldecoa. Motions for new trial were made unsuccessfully by Joaquin Aldecoa and by the defendant bank and the case was carried to the Supreme Court of the Philippine Islands by cross appeals (Bill of Exceptions, Rec. p. 120-154, incl.), which were argued and submitted January 14, 1914 (Rec. p. 156, Case 25,411).

During the pendency of the suit by Joaquin and Zoilo Aldecoa to obtain the cancellation of the mortgage as to

them, the obligation matured and on March 31, 1911, the Hong Kong & Shanghai Banking Corporation filed a complaint in the Court of the First Instance of Manila against all the mortgagors, including Joaquin and Zoilo Aldecoa, for the foreclosure of the mortgage (Rec. p. 1, Case 25,412). The defendants named were Aldecoa & Company, the principal debtor (in liquidation, and represented by William Urquhart, the liquidator appointed by the partners), and Isabel Palet, Joaquin and Zoilo Aldecoa, and Alejandro MacLeod. The original complaint was superseded by an amended complaint (Rec. p. 98, Case 25,412) to which amended answers were filed severally on behalf of Aldecoa & Company (Rec. p. 140) and Isabel Palet (Rec. p. 143) and jointly by the defendants Joaquin, Zoilo and Cecelia Aldecoa (Rec. p. 145). The defendant Alejandro MacLeod having died during the pendency of the suit the action was discontinued as to him (Rec. p. 150). Mr. William Urquhart, who was made a party defendant in his capacity as liquidator for Aldecoa & Company, filed a complaint in intervention (Rec. p. 79) claiming to be entitled to payment of certain moneys due him from Aldecoa & Company as a preferred credit, with precedence over the mortgage obligations in favor of the bank. The trial court found (Rec. p. 389, Case 25,412) that Mr. Urquhart had no legal interest in the matter in litigation between the parties plaintiff and defendant and dismissed his complaint of intervention. Mr. Urquhart appealed from the judgment but it was affirmed by the Appellate Court (Rec. p. 141-2, Case 25, 412). No appeal was taken from that decision.

The foreclosure suit was tried before the Hon. C. S. Lobingier, one of the judges of the Court of the First Instance of Manila, on January 22, 1912 (Rec. p.149). On August 10, 1912, Judge Lobingier rendered judgment in favor of the plaintiff bank and against the defendant

Aldecoa & Company in liquidation, for the sum of ₱ 344,924.23, together with interest thereon at the rate of 7 per cent per annum, to be compounded semi-annually, which sum the said defendant was ordered to pay into Court on or before the first day of the following term, in default of which it was decreed that the mortgage executed to plaintiff by the said defendant and by the defendants Isabel Palet, Joaquin Aldecoa and Zoilo Aldecoa be foreclosed by the sale of the mortgaged property to satisfy the said sum, interest and costs. It was further decreed that in the event that the proceeds of the sale should be insufficient to pay the amount found due the plaintiff, with interests and costs, the said sum should be paid by the said defendants Aldecoa & Company, Isabel Palet, Zoilo Aldecoa and Joaquin Aldecoa, jointly and severally, subject to the condition that execution should not issue against those defendants, except by way of foreclosure of the property specifically mortgaged by them, until the property of Aldecoa & Company should first be exhausted (Rec. p. 390, Case 25,412).

From this judgment the defendants appealed to the Supreme Court of the Philippine Islands.

On March 23, 1915, the Supreme Court of the Philippine Islands rendered decisions in both cases, namely, in the suit for the cancellation of the mortgage brought by Joaquin and Zoilo Aldecoa and in the suit brought by the bank for the foreclosure of the mortgage. In the first case (25,411, Rec. pp. 156, *et seq.*) it was held that the mortgage which Joaquin and Zoilo Aldecoa sought to have cancelled as to them was a valid and binding obligation as to each of said mortgagors. In the second case (Case 25,412) the Court sustained the judgment against Aldecoa & Company in liquidation, and the decree of foreclosure of the mortgage executed to the plaintiff bank by Isabel Palet, Joaquin Aldecoa and Zoilo Aldecoa. It also sus-

tained the judgment against Isabel Palet for any deficiency which might result after the sale of the mortgaged property but reversed the judgment with regard to the defendants Joaquin Aldecoa, Zoilo Aldecoa and Cecelia Aldecoa as regards their liability for such deficiency.

Aldecoa & Company acquiesced in the decision but Joaquin Aldecoa, Zoilo Aldecoa and Isabel Palet have appealed therefrom to this Court.

THE ISSUES MADE BY THE PLEADINGS.

Case 25,411.—In this case the substance of the averment of the plaintiffs Joaquin Aldecoa and Zoilo Aldecoa is (Rec. p. 18) that they were minors at the time they executed the mortgage in dispute and further that they were induced to execute it by misrepresentation and undue influence brought to bear upon them by the representative of the Hong Kong & Shanghai Banking Corporation. These contentions are met on the part of the bank (Rec. p. 25) by the averment that at the time of the execution of the mortgage in question the appellants Joaquin and Zoilo Aldecoa, who are Spanish subjects, had been lawfully emancipated by their mother, Isabel Palet, and were therefore competent to execute the mortgage in question and that the mortgage was in fact executed by them without any improper influence being brought to bear upon them, and with their full knowledge of the circumstances.

Case 25,412.—In this case the contention of the plaintiff bank was that the defendant Aldecoa & Company was liable as principal debtor; that the defendants Isabel Palet, Joaquin Aldecoa, Zoilo Aldecoa and Cecelia Aldecoa were liable as members of the defendant partnership; and that the defendants Isabel Palet, Joaquin Aldecoa and Zoilo Aldecoa were also liable as mortgagors (amended complaint, Rec. p. 98, Case 25,412). Aldecoa & Company not having appealed from the decision, it is not necessary to consider its contentions.

On behalf of Isabel Palet it was contended that she had been relieved from her liability under the mortgage by reason of the plaintiff's failure to sue Aldecoa & Company as each installment of the principal fell due; that this amounted to a novation of the contract, operating to release this defendant from her obligation as mortgagor (answer of Isabel Palet, Rec. p. 54, Case 25,412).

On behalf of Joaquin and Zoilo Aldecoa, it was contended

(a) That they were not partners in the firm of Aldecoa & Company and therefore not liable as such for its debts;

(b) That they were minors at the time they executed the mortgage for the plaintiff; that their emancipation by their mother Isabel Palet is void, and

(c) That the pendency of their suit to cancel the mortgage was a bar to the subsequent suit for foreclosure.

The Supreme Court upheld the contention of the defendants, Joaquin and Zoilo Aldecoa, as regards their liability as partners of Aldecoa & Company but held adversely to them with respect to the other issues.

In behalf of Cecelia Aldecoa it was contended that she was not liable as a member of the firm of Aldecoa & Company. This contention was upheld by the Supreme Court (Rec. p. 396) reversing the trial court. The bank did not appeal from this decision.

There is no dispute as to the facts, and the issues of law are sharply defined. They are

1. As to the appeals of Joaquin and Zoilo Aldecoa:

(a) Were they lawfully emancipated by their mother, Isabel Palet?

(b) Did they ratify the execution of the mortgage after attaining their majority?

(c) Was their plea of *lis pendens* well taken?

(d) Was the mortgage supported by a valid consideration?

2. As to the appeal of Isabel Palet:

(a) Is she liable as a partner for the debt of Aldecoa & Company to the bank?

(b) Has the mortgage on her property been discharged by novation of the contract without her consent?

STATEMENT OF FACTS.

I.

The appellant Isabel Palet is the widow of Zoilo Ibañez de Aldecoa y Palet, and the appellants Joaquin and Zoilo Aldecoa are their children who were born in the Philippine Islands March 27, 1884, and July 4, 1885, respectively. Zoilo Aldecoa, Sr., deceased, and his wife Isabel Palet, are natives of Spain. Zoilo Aldecoa, Sr., died in Manila, of which city he was a domiciled resident, October 4, 1895.

Stipulation, Rec. p. 155, Case 25,411.

II.

Zoilo Aldecoa, Sr., was at the time of his death the principal partner of the firm of Aldecoa & Company, engaged in business in the City of Manila. Upon his death his widow and the other surviving members of the firm organized another partnership for the purpose of carrying on the business in question. This partnership continued until December 31, 1896, when it was merged into another partnership under the firm name of Aldecoa & Company formed for the purpose of carrying on the business of the old concern. It appears from the articles of this partnership (Rec. pp. 183-197, inclusive, Case No. 25,412) that the appellants, Joaquin and Zoilo Aldecoa and their sister, Cecelia, were included as industrial partners. The appellant Isabel Palet y Gabarro was one of the capitalist partners.

III.

In 1897, Isabel Palet and her children, the appellants Joaquin and Zoilo Aldecoa, left the Philippine Islands and were absent from the Islands until 1903, when they returned.

Stipulation, Rec. p. 156, Case 25,412. Finding No. 5, decision Trial of the Court, Rec. p. 375, Case 25,412.

IV.

By public notarial instruments in evidence as plaintiff's Exhibits T (Rec. p. 203, Case No. 25,412) and U (Rec. p. 204, Case No. 25,412) executed in Manila July 31, 1903, the appellant Isabel Palet emancipated her sons, the appellants, Joaquin and Zoilo Aldecoa, each of whom was at that time over the age of 18 years; and the emancipation was expressly accepted by each of the said appellants, who, in token of their assent thereto, signed the acts of emancipation.

V.

The act of emancipation of the appellant Joaquin Aldecoa is in the following terms, to wit:

In the City of Manila, Philippine Islands, this thirty-first day of July, nineteen hundred and three, before me, Enrique Barrera y Caldes, Notary Public of the same, personally appeared Doña Isabel Palet y Gabarro, widow of the Don Zoilo Ibañez de Aldecoa y Aguirre, property holder, of lawful age, and resident of this City, without exhibiting any cedula on account of being exempt therefrom by reason of her sex:

And Don Joaquin Ibañez de Aldecoa y Palet, without any special profession, over eighteen years of age, and resident of the City, with cedula number one hundred sixty one thousand nine hundred and seventy eight, issued by the Collector of Internal Revenue of this City for the present year.

And having, as I believe they have, legal capacity to execute this instrument, Doña Isabel Palet y Gabarro states:

That acknowledging in her son, Don Joaquin Ibañez de Aldecoa, the faculty to rule his person and manage his property, renounces for herself the parental authority (*patria protestad*) which she heretofore had over his person and property, and by virtue hereof she empowers him from now on to manage by himself the property belonging to him and that which in the future he might acquire, just as if he was of lawful age in accordance with the laws, without depending from or the intervention of the exponent, executing all kinds of documents, either public or private, which may be necessary for the above named purposes.

Don Joaquin Ibañez de Aldecoa y Palet, on his turn states: That he accepts the emancipation granted him by his mother by virtue of the present document, being grateful to her for the benefit she thus confers on him.

In witness whereof, the above named parties ratify their statements before me, said parties being personally known to me, to be the persons above named, and swear that this is an act of their free will and deed, in the presence of the witnesses Don Candido del Rosario y Espiritu and Don Manual Sansano y Arciaga, both clerks, of lawful age and residents of this City, who sign with them this document which I authorize as Notary Public under my signature and the seal of my office, on the day, month and year above mentioned: to all of which I certify.

(Signed) ISABEL PALET, Widow of Aldecoa,

(Signed) JOAQUIN IBAÑEZ DE ALDECOA,

(Signed) CANDIDO DEL ROSARIO,

(Signed) MANUAL SANSANO.

(Signed) ENRIQUE BARRERA Y CALDES,

Notary Public.

(Notarial Seal.)

My commission expires January 1, 1905.

The act of emancipation of the appellant Zoilo Aldecoa is expressed in identical terms, with the exception of the difference in names.

VI.

At the time of the execution by the defendants Isabel Palet and Joaquin and Zoilo Aldecoa of the acts of emancipation above referred to, the law of the Kingdom of Spain regarding the emancipation of minors and the effects of such emancipation with respect to the latter and by which the nationality, status and capacity of Spanish subjects residing in foreign countries was to be governed was that contained in Articles 9, 18, 154 to 173, inclusive, and 314 to 319, inclusive, of the Civil Code of the Kingdom of Spain, which articles are the same as the articles under the same number of the Civil Code in force in the Philippine Islands on the 14th day of August, 1898.

Findings Trial Court, Par. VII, p. 376, Case 25,412. .

VII.

After the execution by the appellant Isabel Palet and the appellants Joaquin Aldecoa and Zoilo Aldecoa of the acts of emancipation above mentioned (Exhibits T and U) the two defendants last named participated in the management of Aldecoa & Company as partners by being present and voting at meetings of the partners of the company upon matters connected with its affairs as appears from the minutes of such meetings in evidence as plaintiff's Exhibits X, Y and Z (Rec. pp. 208-209, inc., Case 25,412).

Findings Trial Court, Par. VIII, Rec. 376, Case 25,412.

VIII.

On the 23d day of February, 1906, Aldecoa & Company and the appellants, Isabel Palet, Joaquin Aldecoa and

Zoilo Aldecoa entered into an agreement with the plaintiff bank by which the latter granted to Aldecoa & Company a credit in account current up to the sum of ₱475,000 upon the terms and conditions set forth in the written instrument executed on that date by said parties, a copy of which is in evidence as plaintiff's Exhibit A (Rec. p. 150, Case 25,412; Rec. p. 4, Case 25,411).

Findings Trial Court, Par. IX, p. 376, Case 25,412.

IX.

On the 23d day of March, 1906, the appellee bank and the defendants Isabel Palet, Joaquin and Zoilo Aldecoa and Aldecoa & Company, executed an additional contract, supplemental to the contract of February 23, 1906, above referred to as Exhibit A, for the purpose of (a) increasing the security given the appellee bank for the performance of the obligations undertaken in its favor by Aldecoa & Co. pursuant to the terms of the contract of February 23, 1906 (Exhibit A), (b) correcting an error in the description of certain property mortgaged to the plaintiff bank by the said instrument of February 23, 1906, and (c) to determine the amount for which each of the mortgaged properties should be liable, all of which appears more particularly from the said supplemental contract of March 23, 1906, a copy of which is in evidence as plaintiff's Exhibit B (Rec. pp. 14-18, Case 25,412), admitted without objection by defendants (Rec. p. 150, Case 25,412).

Findings, Trial Court, Par. X, p. 377, Case 25,412.

X.

The mortgage created by the said contracts of February 23, 1906, Exhibit A, and March 23, 1906, Exhibit B, was duly recorded in the office of the Register of Deeds in Manila. The said mortgaged real estate was subsequently

brought under the operation of the Land Registration Act of the Philippine Commission by the mortgagors and in the year 1907 was registered as the property of the mortgagors in accordance with their respective interests therein, subject to the mortgage and in favor of the appellee bank.

Findings, Trial Court, Par. XI, XII and XIII, Decision, Trial Judge, Rec. p. 376-378, Case 25,412.

XI.

On December 31, 1906, Aldecoa & Company went into liquidation on account of the expiration of the term for which the firm had been organized and Mr. William Urquhart was by the partners duly elected liquidator.

Findings, Trial Court, Par. XV, Rec. p. 380, Case 25,412.

XII.

On the 13th day of June, 1907, by the request of Aldecoa & Company and of the appellants Isabel Palet, Joaquin Aldecoa and Zoilo Aldecoa, and to enable the said Aldecoa & Company to obtain an attachment upon the property of one Alejandro S. MacLeod in a suit then to be brought against the said MacLeod by Aldecoa & Company for the purpose of recovering from him certain shares of the Pasay Estates Company, Ltd., the appellee bank undertook and agreed to provide an attachment bond in the sum of ₱50,000, upon the condition and agreement that the proceeds of the suit against the said MacLeod after deducting the cost of the proceeding should be applied to the discharge *pro tanto* of the liability of Aldecoa & Company to the appellee bank; the instrument of mortgage of February 23, 1906, herein referred to as Exhibit A, was incorporated by reference into the said agreement of June 13, 1907. This contract of June 13, 1907 (identified as

Exhibit V), was signed by the appellant Joaquin Aldecoa, personally, by William Urquhart as liquidator of Aldecoa & Company and by José Maria Ibañez de Aldecoa, as attorney in fact for the appellants Isabel Palet and Zoilo Aldecoa.

Findings, Trial Court, Par. XVI, p. 380-381, Case 25,412.

XIII.

On December 31, 1906, on which date the defendant Aldecoa & Company went into liquidation, the amount of its indebtedness to the plaintiff bank upon the overdraft created by the terms of the contract of February 23, 1906 (Exhibit A), was P516,517.98.

Finding, Trial Court, Par. XXVII, Rec. p. 387, Case 25,412.

Neither the principal debtor of the Aldecoa & Company nor any of the other defendants in the foreclosure suit has paid or caused to be paid the plaintiff the yearly partial payments due under the contract in evidence as Exhibit A (Finding XXVIII, Trial Court, Rec. p. 388, Case 25,412); that from time to time between December 31, 1906, and August 10, 1912, on which date the judgment of the trial Court was rendered, the appellee bank has received various sums of money from or for the account of Aldecoa & Company; that the amount due the plaintiff bank upon the said indebtedness, evidenced by the contract identified as Exhibit A, was, with the interest then accumulated, P344,924.23 on August 10, 1912.

Finding No. XXXI, Trial Court, Rec. p. 388, Case 25,412.

The trial judge in his decision in Case No. 25,412—the foreclosure suit—made careful and complete findings upon all the facts in issue (Rec. pp. 303-319, incl.) and the

appellate court reached the same conclusions upon its review of the evidence (Rec. pp. 400-407, incl., Case 25,412; Rec. pp. 157-158, incl., Case 25,411) in each case. The findings of the trial and appellate courts are more extensive than our statement, as we have eliminated all matters pertaining wholly to the issues raised by those of the parties who have not appealed to this Court.

The Condition of the Record.—It is to be regretted that the appellants have seen fit to encumber the record with so much unnecessary repetition. The original pleadings have been printed, although superseded by the amended pleadings. The amended pleadings and the exhibits attached to them are printed for the third time (Rec. pp. 321-392) as part of the bill of exceptions and the decision of the trial court is printed twice. The result is that the printed records are much more formidable in appearance than they are in reality.

THE APPEAL OF ISABEL PALET.

The basis of the judgment against the appellant Isabel Palet.—With respect to this appellant the judgment of the trial court was that the mortgage given by her on her real property to secure the payment of the advances made to Aldecoa & Company by the appellee bank pursuant to the terms of the agreement embodied in the contract of February 26, 1906 (Exhibit A), should be foreclosed and that in the event of a deficiency she should pay it, subject to the proviso that execution should not issue against her until after the exhaustion of all the assets of Aldecoa & Company. (Decision of Trial Judge, Rec. p. 390, Case 25,412.) The Supreme Court of the Philippine Islands affirmed the judgment in the following terms:

* * * It is hereby adjudged and decreed that the plaintiff corporation recover from defendant Aldecoa & Company, and from defendant Isabel

Palet y Gabarro jointly and severally the sum of P 344,924.23, with interest thereon at the rate of 7 per cent per annum beginning from the 10th day of August, 1912, until complete payment thereof with the costs of both instances; that in case said appellant should not pay the sum which is allowed in this judgment within the term of 60 days * * * the plaintiff corporation may foreclose the mortgage executed by the defendants Aldecoa & Company, Isabel Palet y Gabarro, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa on their real and personal property in favor of the plaintiff corporation. * * *

Rec. p. 414, Case 25,412.

BRIEF OF THE ARGUMENT AS TO THE APPEAL OF DOÑA ISABEL PALET.

1. Isabel Palet was a general partner of the firm of Aldecoa & Company.
2. Aldecoa & Company was a general mercantile partnership (sòcièdad mercantil regular colectiva) and all the members of the firm are liable *in solidum* with the partnership for all its debts.
3. The obligation imposed by the mortgage executed by the appellant Isabel Palet has not been discharged or modified in any way.
4. The forbearance of the Bank to sue Aldecoa & Company immediately upon the maturity of the respective installments of its indebtedness did not constitute an extension of the term.

POINT ONE.

ISABEL PALET Y GABARRO WAS A GENERAL PARTNER IN THE FIRM OF ALDECOA & CO.

The appellant Isabel Palet does not dispute the fact of her membership in the firm of Aldecoa & Company. She appears as one of the members of the firm in the articles of copartnership, as a capitalist partner (Rec. p. 183-197, Case 25,412).

POINT TWO.

ALDECOA & CO. WAS A GENERAL MERCANTILE PARTNERSHIP (SOCIEDAD REGULAR COLECTIVA) AND ALL THE MEMBERS OF THE FIRM ARE LIABLE *IN SOLIDUM* WITH THE PARTNERSHIP FOR ALL ITS DEBTS.

It is stated in the articles of partnership of Aldecoa & Company that

the partnership which is by these presents organized shall be a general mercantile partnership (sociedad mercantil regular colectiva) which is to do business under the name of Aldecoa & Co.

Exhibit H, Par. I, Rec. p. 187, Case 25412.

The provisions of law under which this partnership was organized are to be found in Articles 125 to 144, incl., of the Code of Commerce of the Philippine Islands. Article 127 of that Code provides that

all the members forming a general partnership, whether or not they are managers thereof, shall be liable personally and *in solidum* with all their property for the operations carried on in the name and for account of the company under the firm name by any person authorized to sign the name.

The solidary obligation of each and every one of the general partners of the general mercantile partnership under the Commercial Code is clearly determined by the statute and has been constantly enforced by the Philippine Courts.

Under the law in force in the Philippine Islands the personal liability of each of the general partners for the debts of a mercantile partnership, *in solidum* with the entity itself is inherent in the very nature of the association, and an agreement by which it is sought to relieve one of the partners of this liability is void as to third persons.

Sunico v. Chuidian, 9 Phil. Reps. 631.

But the individual partners may be joined as defendants with the partnership, although the private property of the partners so joined may not be subjected to the payment of the judgment until the common property of the firm is exhausted. The liability of the partner for the debts of the partnership, while solidary, is subsidiary.

Compania Maritima v. Muñoz, 9 Phil. Reps. 326.

These doctrines are the logical result of the recognition of partnerships, under the Philippine law, as *entities*. In the early case of *Wahl v. Donaldson Sim & Company*, in disposing of the contention that the action should abate because of the death of Mr. Donaldson Sim, one of the two partners, the late Mr. Justice Willard, writing the opinion of the Court, said:

We hold that the record shows that the defendant in this case was a collective partnership, organized under the provisions of the Code of Commerce, and was therefore a juridical person, under Article 116 of the Code of Commerce, and under Article 35 of the Civil Code. According to the latter Article it had a personality distinct from that of each one of the partners. * * *

Wahl v. Donaldson Sim & Co., 5 Phil. Reps. 14.

The appellant Isabel Palet did not dispute in the lower courts her liability as a partner for the payment of the debt of Aldecoa & Company to the appellee bank. In her appeal to the Supreme Court of the Philippine Islands from the decision of the Court of First Instance of Manila she assigned only two errors, neither of which put in issue the correctness of the judgment of the trial court with regard to the amount of indebtedness of Aldecoa & Company or the liability of this appellant for its payment. (Decision, Supreme Court of Philippine Islands, Rec. p. 407, Case 25,412.) On the contrary, the second assignment expressly recognized that liability, the contention there made being that the Supreme Court erred in refusing to order that

the property of Aldecoa & Company should be exhausted before the plaintiff firm should be entitled to have recourse to the property of this defendant and appellant for the satisfaction of its judgment.

In its decision, the Supreme Court of the Philippine Islands said regarding the appellant Isabel Palet:

This appellant does not contend that she is not personally liable *in solidum* with Aldecoa Company for the liabilities of the latter firm to the plaintiffs in the event that the appeal taken by Aldecoa & Company should be unsuccessful.

The lower court held that the judgment against Aldecoa & Company should be affirmed. No appeal has been taken from this decision and it is now final.

The seventh paragraph of the assignment of errors upon which this appeal has been taken (Rec. p. 431, Case 25,412) again recognizes by necessary inference the liability of the appellant Isabel Palet for the payment of the judgment against Aldecoa & Company, the only question there presented being the order in which the plaintiff

should have recourse to the assets of the judgment debtors.

The Supreme Court of the Philippine Islands said:

The trial judge directed that the mortgaged property, including the property mortgaged by this defendant, should be sold under foreclosure in the event that Aldecoa & Company should fail to pay into court the amount of the judgment within the time designated by that order. The court recognized the subsidiary character of the personal liability of Doña Isabel Palet as a member of the firm of Aldecoa & Company and decreed that as to any deficiency that might result after the sale of the mortgaged premises execution should not issue against the property of Doña Isabel Palet until the property of Aldecoa & Company should have been exhausted.

Rec. p. 407, Case 25,412.

It is true that the judgment (Rec. p. 414) entered by the Clerk (Rule 66, Supreme Court of the Philippine Islands, Appendix, Vol. VII, Philippine Reports) runs against Aldecoa & Company and Isabel Palet, jointly and severally, and does not in terms express the subsidiary character of the liability of this defendant. This is no doubt due to a mere clerical error in the entry of the judgment and the appellant bank does not oppose such modification as may be necessary to the end that the judgment against this appellant be brought into harmony with the expressed opinion of the lower court, namely, that save as regards the foreclosure of the mortgage no execution shall issue against Isabel Palet until after the exhaustion of the assets of the principal debtor—which, by the way, is a mere formality as there are no such assets available, Aldecoa & Company being notoriously insolvent, as stated by the Supreme Court in its decision. (Rec. p. 405, Case 25,412.)

The statement of the Philippine Supreme Court regarding the insolvency of the firm of Aldecoa & Company is made the subject of the second assignment of error in

Case 25,412 (Rec. p. 430). While the correctness of this finding is by no means essential to the correctness of this judgment we may say in passing that the existence of these appeals furnishes abundant proof of its truth, for it is obvious that if Aldecoa & Company, the principal debtor, as to whom the judgment below is final, were possessed of the means to discharge its liability, and thereby of necessity relieve the persons subsidiarily responsible for its payment, this appeal would not have been taken.

POINT THREE.

THE OBLIGATION IMPOSED BY THE MORTGAGE EXECUTED BY THE APPELLANT ISABEL PALET HAS NOT BEEN DISCHARGED OR MODIFIED IN ANY WAY.

The appellant Isabel Palet in support of her appeal from the decision of the Court of First Instance of Manila made but two assignments of error. The second assignment, which we have already considered, related solely to the alleged error of the trial court in failing to direct that the property of Aldecoa & Company be first exhausted before execution might issue against the property of this appellant. By the other assignment of error it was contended that the trial court erred in failing to hold that the obligation of this appellant as surety had been extinguished in accordance with the provisions of Article 1851 of the Civil Code (Decision, Philippine Supreme Court, p. 407, Case 25,412).

In passing upon this assignment of error the lower court said:

It is urged on behalf of Isabel Palet that the mortgages executed by her upon her individual property have been cancelled. The ground for this contention is that Aldecoa & Company undertook by the contract of February 23, 1906, to discharge its liability to the

plaintiff bank at the rate of not less than ₱50,000 per annum, and that therefore it was the duty of the bank to sue Aldecoa & Company as soon as that firm failed to pay at maturity any one of the partial payments which it had promised to make, and to apply the proceeds from the sale of the property of Aldecoa & Company to the satisfaction of this indebtedness, and that the fact that the bank failed to do so is equivalent to an extension of the term of the principal debtor, and that the effect of this extension has been to extinguish the obligation of this defendant as a surety of Aldecoa & Company. It is also contended that the bank expressly extended the term within which Aldecoa & Company was to satisfy its obligation by allowing Aldecoa & Company to furnish additional security. Doña Isabel Palet alleges that all these acts were done without her knowledge or consent.

The extension of the term which, in accordance with the provisions of article 1851 of the Civil Code produces the extinction of the liability of the surety must of necessity be based on some new agreement between the creditor and principal debtor, by virtue of which the creditor deprives himself of his right to immediately bring an action for the enforcement of his claim. The mere failure to bring an action upon a credit, as soon as the same or any part of it matures, does not constitute an extension of the term of the obligation.

Doña Isabel Palet is a personal debtor, jointly and severally, with Aldecoa & Company, of the whole indebtedness of the latter firm to the bank, and not a mere surety for the performance of the obligations of Aldecoa & Company without any solidary liability. It is true that certain additional deeds of mortgage and pledge were executed by Aldecoa & Company in favor of the bank as additional security after Aldecoa & Company had failed to meet its obligation to pay the first instalment due under the agreement of February 23, 1906, but there is no stipulation whatever in any of these documents or deeds which would bind the

bank to wait for the expiration of any new term before suing upon its claim against Aldecoa & Company. We find nothing in the record showing either directly or indirectly that the bank at any time has granted an extension in favor of Aldecoa & Company for the performance of its obligations. The liquidator of Aldecoa & Company authorized the bank to grant certain extensions to some of the provincial debtors of Aldecoa & Company whose debts were to be paid to the bank under the authority conferred upon the bank by Aldecoa & Company. There is a marked difference between the extension of time within which Aldecoa & Company's debtors might pay their respective debts, and the extension of time for the payment of Aldecoa & Company's own obligation to the bank. If the bank had brought suit on its credit against Aldecoa & Company for the amount then due on the day following the extension of the time of Aldecoa & Company's debtors for the payment of their debts, it is evident that the fact of such extension having been granted could not have served in any sense as a defense in favor of Aldecoa & Company against the bank's action although this extension would have been available to Aldecoa & Company's debtors if suit had been brought to enforce their liabilities to Aldecoa & Company. We must, therefore, conclude that the judgment appealed from, in so far as it relates to Doña Isabel Palet, must likewise be affirmed. (Rec. p. 408, Case 25,412.)

It is submitted that the court below committed no error in thus disposing of the contentions of this appellant.

There is no pretention that the original obligation incurred by the appellant Isabel Palet was not valid and binding nor could there be in the light of the terms of the contract. The evidence shows that early in 1906 Aldecoa & Company were heavily indebted to the plaintiff bank; that time was desired for the purpose of meeting the obligation so as to avoid the necessity of sacrificing assets by a forced sale. The manager of the bank insisted that un-

less additional security were furnished by the individual partners proceedings would be taken at once to enforce payment. Aldecoa & Company had been in the debt of the appellee bank in large amounts since 1901 (Testimony of defendant's witness Urquhart, Rec. p. 169, Case 25,412). The correspondence between the Manila manager of the appellee bank and the managers of Aldecoa & Company is set forth in full in the record of Case 25,411 on pages 81-92, incl. It is apparent from this correspondence and particularly from the letter addressed by the manager of Aldecoa & Company to Mrs. Isabel Palet under date of October 18, 1905 (Exhibit J, Rec. p. 83, Case 25,411), that Aldecoa & Company was at that time indebted to the bank in a sum in excess of ₱400,000 then due and demandable and that the bank had given formal notice that the obligation must be discharged before the end of the year or satisfactory security given. It was with full knowledge of this condition of affairs and in order to obtain for herself and the other members of the firm an additional advance and the benefits of an extension of time within which to discharge this obligation that Mrs. Isabel Palet executed the mortgage to the bank (Exhibit A, Rec. p. 7, Case 25,412). By the terms of that agreement Aldecoa & Company was allowed five years within which to discharge its obligation to the bank (Rec. p. 11, Case 25,412), the understanding being that the overdraft was to be reduced at the rate of ₱50,000 a year during that period and discharged in full at the end of that time, the debt to draw interest at 7 per cent per annum compounded annually (Exhibit A, Par. IX, Rec. p. 12, Case 25,412).

The obligation of Aldecoa & Company to discharge its indebtedness to the bank upon the agreed terms was guaranteed by Mrs. Isabel Palet and her sons, their obligation being in terms secured by the mortgage of the property described in the agreement (Exhibit A, Par. X,

XI, XII, Rec. pp. 12-13. Case 25,412). In Paragraph XIII it was stipulated for the benefit of the mortgagors that the bank should not be entitled to foreclose its mortgage upon the property of the appellants in any event until the expiration of the full term of the five years allowed Aldecoa & Company for the discharge of its debt.

Aldecoa & Company went into liquidation on December 31, 1906, and William Urquhart was elected liquidator by resolution of the members of the firm adopted at a meeting held in Manila January 24, 1907 (Exhibit J, Rec. p. 198, Case 25,412), at which Mrs. Isabel Palet was represented by her attorney in fact, Don Fernando Zobel. By the terms of that resolution it was declared to be the opinion of the members of the firm that it was to the interest of all concerned that

the liquidation be carried on as slowly as possible inasmuch as in that manner there will be great probability to succeed in getting all the debtors of the firm to pay in full the amount of their debts and to sell certain parts of the business as a going concern,

and the liquidator was authorized to endeavor to obtain the cooperation of The Hong Kong & Shanghai Banking Corporation in winding up the business of the firm in accordance with the terms of this resolution.

A large part of the assets of Aldecoa & Company consisted of credits against provincial concerns with which it had been doing business. Several of these credits were assigned to the bank by way of additional security (Exhibit E, Rec. p. 28; Exhibit F, Rec. P. 35; Exhibit G, Rec. p. 42, Case 25,412), with authority to make collections and to apply the proceeds to the discharge of the indebtedness of Aldecoa & Company. The bank consented to give these provincial debtors of Aldecoa & Company an opportunity to discharge their obligations in installments and this agreement was carried out. On

cross examination the defendant's witness Urquhart testified as follows on this subject:

About the 20th of January the Hong Kong Bank came to an arrangement to make the liquidation slow, and give time to people to pay. (Rec. p. 179, Case 25,412.)

It appears conclusively from the testimony of Mr. Urquhart that in no instance did the bank grant any extensions of time to any of Aldecoa & Company's debtors for the payment of their obligations without obtaining the consent of Mr. Urquhart as liquidator (Rec. pp. 170-1, Case 25,412), and that the bank did nothing in this regard except to acquiesce in the desire of the partners of Aldecoa & Company, including Mrs. Isabel Palet, that the liquidation should be carried out slowly. There is not a word of evidence in the record to show that the bank at any time granted any extensions of time within which the debt of Aldecoa & Company should be paid. It is too clear for argument that the lower court is correct in its conclusion that the consent of the bank to an extension of time by Aldecoa & Company for the payment by the debtors of that firm of their debts could in no sense be construed as an extension of the term for the payment of the debt of Aldecoa & Company to the bank.

Decision, Phil. Sup. Ct., Rec. p. 409, Case 25,412.

POINT FOUR.

THE FORBEARANCE OF THE BANK TO SUE ALDECOA & CO. IMMEDIATELY UPON THE MATURITY OF THE VARIOUS INSTALLMENTS OF ITS INDEBTEDNESS DID NOT CONSTITUTE AN EXTENSION OF THE TERM.

It is, of course, obvious that the bank, had it seen fit to do so, might have disregarded the request of Mrs. Isabel Palet and her associates that the liquidation be carried on slowly and might have sued Mrs. Palet and her associates at once as each installment fell due, although it could not have proceeded to foreclose the mortgage until after the expiration of the stipulated period of five years. The failure to do so, however, does not constitute any such extension as would have discharged Mrs. Isabel Palet had she been merely a surety, instead of one of the principal debtors.

This contention was made in the early case of *Banco Español Filipino v. Donaldson-Sim & Co.*, 5 Philippine Rep. 418. In that case the bank sued the sureties, who had obligated themselves *in solidum* with the principal debtors. The defense was made that the sureties had been discharged by the failure of the bank to bring suit immediately upon the maturity of the obligation. The Court disposes of the contention adversely to its proponents, saying:

Deferring the filing of the action does not imply a change in the efficacy of the contract or liability of any kind on the part of the debtor. It is merely, without demonstration of proof to the contrary, respite, waiting, courtesy, leniency, passivity, inaction. It does not constitute novation, because this must be express.

Banco Español Filipino v. Donaldson-Sim & Co.,
5 Phil. Reps. at p. 423.

The underlying principle of the Donaldson-Sims case is that whenever, under our Philippine Civil Code, a surety obligates himself *in solidum* with the principal debtor, such surety, so far as the creditor is concerned, is himself a principal debtor and may be sued alone. Art. 1822 of the Civil Code provides that

If the surety binds himself *in solidum* with the principal debtor the provisions of Section 4 of Chapter 3 of Title One of this Book shall be observed.

The reference is to that part of the Civil Code which deals with the subject of solidary obligations.

In this case, Mrs. Isabel Palet owes the bank, *in solidum* with Aldecoa & Company, the whole debt of the latter. The solidary nature of her obligation is not affected by the fact that it is subsidiary—that she is entitled to have partnership assets exhausted before the creditor has recourse to her individual assets.

Civil Code, Art. 1140.

The only effect of the mortgage, therefore, was to subject specific property to the obligation resulting from the existing partnership and to render it liable to judicial sale in satisfaction of the *primary* obligation of Aldecoa & Company as an entity, instead of the *subsidiary* solidary liability of Mrs. Palet as a general partner.

Even had Mrs. Palet been a mere surety, instead of a solidary principal debtor, the principle that mere forbearance to sue the principal debtor, without a binding agreement for an extension, does not discharge the surety is as thoroughly established in our own law as it is in the law of Spain and of the Philippine Islands.

Bank of Union *v.* Mackey, 140 U. S. 220.
Cross *v.* Allen, 141 U. S. 528.
U. S. *v.* Nazandt, 11 Wheaton 184.

It is respectfully submitted that damages in addition to interest should be awarded plaintiff against this defendant pursuant to the provisions of Par. II of the 23d rule of this Court.

THE APPEAL OF JOAQUIN AND ZOILO IBÁÑEZ DE ALDECOA.

The liability which appellee seeks to enforce against these appellants rests solely upon the execution by them of the mortgage upon their real estate given to secure the indebtedness of Aldecoa & Company to plaintiff bank (Exhibit A, Rec. p. 7, Case 25,412). It was contended in the court below that these defendants were also liable as partners of Aldecoa & Company, but this contention was decided adversely to the Bank and no appeal was taken from the ruling, the practical effect of the decision with regard to the validity of the mortgage being identical. The defendants were under the age of twenty-three years when they signed the mortgage, but had been emancipated by the appellant, their mother, who was then a widow. They seek to repudiate the obligation upon the theory that their emancipation was invalid and they were therefore minors, incapable of contracting, when they signed the mortgage. They also contend (Assignment of errors, No. XI, Rec. p. 431, Case 25,412) that their plea of another suit pending should have been sustained, and that the mortgage was without consideration as to them.

BRIEF OF THE ARGUMENT AS TO THE APPELLANTS JOAQUIN AND ZOILO ALDECOA.

The grounds upon which we contend that the judgment against these appellants should be affirmed are as follows:

1. The emancipation of these appellants and the subsequent execution by them of the disputed mortgage were valid under the laws of the Philippine Islands.

2. The defendants Joaquin and Zoilo Aldecoa and their mother, Isabel Palet, are subjects of the Kingdom of Spain.

3. Their emancipation by their mother, Mrs. Isabel Palet, was valid under their national law.

4. Foreigners capable of contracting by the terms of their national law are bound by their contracts made in the Philippine Islands.

5. The mortgage has been ratified by the defendant Joaquin Aldecoa after he attained his full majority.

6. The mortgage was executed by these defendants voluntarily and their consent was not obtained by improper conduct on the part of the appellee.

7. The mortgage by these defendants is supported by a valid consideration.

8. The plea of another suit pending was properly rejected.

POINT ONE.

THE EMANCIPATION OF THE APPELLANTS, JOAQUIN AND ZOILO IBAÑEZ DE ALDECOA, AND THE SUBSEQUENT EXECUTION BY THEM OF THE DISPUTED MORTGAGE, WERE VALID UNDER THE LAWS OF THE PHILIPPINE ISLANDS.

(a) THE ISSUE AS TO THE VALIDITY OF THE EMANCIPATION.

In their amended complaint in the action for the cancellation of the mortgage (Rec. p. 44, Case 25,411), the appellants, Joaquin and Zoilo Ibañez de Aldecoa, allege (page 2) that in attempting to emancipate her sons and in conferring upon them authority to dispose of their property, their mother, Doña Isabel Palet, acted

in violation of the laws in force in the Philippine Islands,

and that at the time when the acts of emancipation were executed their mother had no authority whatever over them.

The issue in this case, as stated by the court below (Rec. p. 159, Case 25,411) was

whether Doña Isabel Palet could legally emancipate the plaintiffs under the law in force in this country in July, 1903, and thus confer upon them capacity to execute a valid mortgage upon their real property with her consent.

The same issue was made by the answer of these appellants to the complaint of the Hong Kong Bank in the fore-

NOTE.—The attention of the Court is respectfully drawn to a misprint on page 147 of the Record of Case 25,412 whereby it is made to appear that the appellant Joaquin was only twelve years of age when he executed the mortgage in dispute. The figures have been inverted—the appellant at that time being twenty-one years of age as shown by the stipulation of facts appearing on page 155 of the Record, Case 25,411.

closure suit (Amended answer of Joaquin and Zoilo Ibañez de Aldecoa, Rec. p. 147, Case 25,412).

The specific contentions upon which the defense is based are:

1. That those provisions of the Civil Code authorizing emancipation of minors have been repealed by implication by Sections 551, 552 and 553 of the Code of Civil Procedure enacted by the Philippine Commission in 1901 (Act 190).

2. That this law was applicable to appellants in 1903, when the acts of emancipation were executed.

We contend on the contrary, not only that the provisions of the Civil Code continue to govern in cases in which the *patria potestas* was being exercised when the new Code took effect, as held by the lower court, but that there has been no repeal by implication or otherwise of those provisions of the Civil Code relating to the *patria potestas*, and that with a single exception of minor importance, the law on the subject of the *patria potestas*, as established by the Civil Code, remains in force in its entirety.

The provisions of the law relating to the *patria potestas* are to be found in Title 7, Book 1 of the Civil Code (Articles 154 to 180).

The gist of the contention of the appellants was that inasmuch as the cited sections of the Code of Civil Procedure establish the rules that children whose parents are living are subject to guardianship and that parents are no longer entitled as of right to the administration of the property of their children there is such a conflict between these provisions of the Code of Civil Procedure and the articles of the Civil Code relating to the *patria potestas* that the statutes relating to this institution, including that by which emancipation was authorized, have been repealed by implication; that the acts of emancipation having been

executed subsequently to the enactment of the Code of Civil Procedure were therefore void.

The Supreme Court of the Philippine Islands held that the guardianship provisions of the Code of Civil Procedure now in force in the Philippines have repealed by implication that part of the Civil Code by which parents enjoying the *patria potestas* over their minor children were entitled to the administration and usufruct of the property of such children; but that this repeal of the Civil Code was not operative with respect to parents who were in the exercise of the *patria potestas* under the Civil Code at the time of the enactment of the new law; that as to such parents, their rights and duties with respect to their children, including the right of emancipation, continued to be regulated by the Civil Code.

- (b) THE ENACTMENT OF THE CODE OF CIVIL PROCEDURE DID NOT AFFECT EXISTING RELATIONS BETWEEN PARENT AND CHILD.

Upon this branch of the subject the court below said:

Having determined that the present Code of Civil Procedure has repealed the *patria potestas* with reference to the child's estate and the power of emancipation by concession of the parent, the question remains: Does the new order of things apply to a parent who assumed charge of the property of her minor children in 1895? If it does, then the execution of the mortgage which the appellant children now seek to have annulled was an act properly devolving upon a guardian appointed by the court, who must have asked for and received the Court's approval to enter into the said contract before it could bind the property of the children. On the other hand, if the new law does not affect estates of minor children whose parents assumed charge thereof prior to the enactment of the new code, the validity of the mortgage must be determined by the provisions of the Civil Code. To state the proposition in another

form: Were all parents administering the property of their minor children by virtue of the provisions of the Civil Code on October 1, 1901 (the date the new law of guardianship became operative), *ipso facto* deprived of their control over the estates of their minor children? Did it immediately become necessary to bring these estates under the operation of the new law?

Under cover of procedure a radical departure from the substantive law had been made. The Civil Code provided a method of conserving the estates of minor children through the agency of their parents, without the necessity of judicial intervention (except in a very limited sense). It had, furthermore, endowed the minor child after emancipation by concession of the parent with the capacity to freely contract with third persons, requiring only the parent's approval of contracts in alienation of or encumbering the child's real property and for the borrowing of money. And lastly, it gave to third persons entering into contracts with emancipated children assurance that such contracts were binding and valid upon the children. The new law of guardianship practically placed the parent in the position of a stranger to the child's estate, giving him only a preferential right, other things being equal, to an appointment as guardian of the estate. It brought the child's estate under the control of the court. And finally, the incapacity of the children between the age of 18 and the age of majority to contract with third persons could not be modified in the least by mutual consent of the parent and child, and, hence, contracts made in that manner were no longer binding upon the child. The change was abrupt, it was entire, and, unfortunately, it was not specified but implied. Whether the change was casual or intended, it is unnecessary to determine. That it occurred is the unavoidable conclusion. Under these circumstances the inquiry naturally arises, Does the new law contain any saving provision excepting from its operation those estates of minor children which were being administered either

by the parents under the *patria potestad* or by the children themselves under the provisions of the Civil Code relating to emancipation by concession of the parent? That the authors of the new code recognized a conflict between the new law of guardianship and the existing system of caring for the estates of incompetents is evident from an examination of section 581 thereof. That section reads:

"Pending guardianships to proceed in accordance with Spanish law, with certain exceptions.—All proceedings in cases of guardianship pending in the Philippine Islands at the time of the passage of this Act shall proceed in accordance with the existing Spanish procedure under which guardians were appointed: Provided, nevertheless, That any guardian appointed under existing Spanish law may be removed in accordance with the provisions of section five hundred and seventy-four of this Act, and his successor may be appointed as therein provided, and every successor to a guardian so removed shall, in the administration of the person or estate, or either, as the case may be, of his ward, be governed by the provisions of this Act."

This section saves from the operation of the new act all proceedings in cases of guardianship pending in the Philippines Islands at the time of its passage. Does this refer to and include the administration of the property of minor children by their parents under the provisions of the Civil Code? If it does then the authority which Isabel Palet exercised over the property of her minor children was not affected by the enactment of the new code of procedure, and she was at liberty to proceed as she did, in accordance with the provisions of the Civil Code, to emancipate her children by a formal declaration, and they thereupon acquired the capacity extended to emancipated children by Article 317 of that code.

Examining the section with a view to ascertaining the mere literal meaning of the language used, we are at once met with the argument that it refers only to cases of guardianship and that the parent admin-

istering the estate of his minor child in accordance with the Civil Code is not a guardian, either under the Civil Code or as that word is used in the Code of Civil Procedure. Hence, according to this argument, the *patria potestad* and the ancillary right of emancipation pertaining to the parent are not saved from the operation of the new law by section 581. But we are of the opinion that the argument amounts to a play upon words rather than to a reasonable interpretation of the section. In the first place, the question arises, In what sense were the words, "guardian" and its derivative, "guardianship," used in section 581? Were they used in the same sense as in the preceding sections of Chapter 27 of the new act, the chapter prescribing the new law of guardianship? If so, they include the administration of the estates of all incompetents, including infants whose parents are living, for that is the design of the new law of guardianship. If the argument under examination is sound, it must be held that the authors of the code descended from this all-inclusive meaning of the word when they finally came to the consideration of what ought to be saved, and attempted to deal only with guardianship as that term is understood in the civil law. A careful examination of the entire act, in the light of the conditions under which it was passed, reveals convincing evidence that the authors of the code attempted no such nicety of expression in section 581. With the advent of American sovereignty in 1898 there came an influx of American ideas of administration of justice. A new code of criminal procedure was enacted under authority of the military governor in 1900, and early in 1901 the first Philippine commission undertook as one of its first tasks the reorganization of the courts and the enactment of a new code of civil procedure. The new legislation did not purport to be an amendment of the Spanish law on the subject. On the contrary, it was a virtual substitution of the one for the other. The various sections of the Code of Civil Procedure

were, practically speaking, adopted without material alteration from one or another of the States of the American Union. Both executive and legislative affairs were, at the time, being discharged by a single body—the Philippine Commission—and the pressure of business afforded little opportunity or time to carefully survey the field covered by the new legislation and discover how much of the former law would be affected by the new act. The only method that could be safely followed, under the circumstances, was to ruthlessly brush aside the Spanish law and inaugurate the new in the form which had withstood the test of time in the United States, and leave the extent of the change to be ascertained by the courts in the actual administration of the new code by determining implied repeals. Hence, the authors of the new code expressed themselves entirely in terms of American law. Instances pointing to this fact are numerous. Thus, “embezzlement” in section 30; “adverse possession” in section 41; “battery” and “slander” in section 43; “corporation” in section 198 and various other sections; many of the terms used in the chapter on evidence; “residuary legatee” in section 644; “heir” as it is used in various sections of the probate procedure; all show quite clearly the extent to which the authors of the new code held to the technical terms of American law in compiling the new code. Bearing in mind such extreme instances of the terms in which the authors of the new code expressed themselves, is it possible that they stopped to make a distinction in section 581 between the administration of a minor’s estate by his parent and the administration of the estates of all other incompetents? They knew that the system they were introducing was applicable to the estates of all incompetents. The fact that they inaugurated this new system of caring for the estates of incompetents clearly shows that they disapproved, without distinction, all of the existing law on that subject. The administration of the estate of a minor by his parent was impliedly re-

pealed by the new law. Is it not reasonable to suppose that the saving clause, which it was deemed desirable to insert in the new law, was intended, by implication, to include those pending cases of that nature? A saving clause is enacted to save something which would otherwise be lost. When existing procedure is altered or substituted by another, it is usual to save those proceedings pending under the old law at the time the new law takes effect. This was the purpose of section 581. It was designed to save undisturbed all pending proceedings in guardianship cases; that is, those proceedings already begun and still unfinished, which would otherwise have been affected by the new law, were to be allowed to continue to determination in accordance with the old law. There was no reason for allowing guardianship so called under the Civil Code, pending at the time the new code went into effect, to continue undisturbed by the new law, while parents who were administering the property of their minor children under the same code must submit to the new regulations. Both were equally favored institutions under the civil law, and both were equally disapproved by the authors of the new code.

But it is said that those pending cases wherein the parents were administering the property of their minor children do not come within the saving provisions of section 581 because that section refers only to pending cases of guardianship wherein the guardians were appointed in accordance with the Spanish procedure; that is, guardians who were subject to removal by the court in accordance with the provisions of section 524 of the new code, and whose successors could be appointed as therein provided.

Guardianship, so called under the Civil Code, was conferred (a) by will; (b) by law; and (c) by the family council. Guardians thus designated were removable generally by the family council. The right to administer the property of an infant child was conferred upon the parent by law. Under article 169 of the Civil Code the parent lost the authority over his minor

child (1) by a final judgment in a criminal case; and (2) by a final judgment in a case for divorce. And under article 171 the courts had the power to deprive parents of the parental authority or suspend the exercise thereof when they treated their children with excessive cruelty, or if they gave them corrupting orders, advice, or examples. The courts could also deprive the parents either totally or partially of the usufruct of the child's property.

All pending cases of testamentary guardianship, legitimate guardianships, and guardianships conferred by family councils fall within the provisions of section 581. The guardians in these cases may be removed by the Court in accordance with the provisions of section 574, and their successors appointed as therein provided. What sound reason can be advanced for excluding those pending cases wherein the person and property of the minor child were being cared for by the parent under the *patria potestad*? The *patria potestad* was conferred by law. In each instance the law specifically designated in their order the persons who were entitled to the care and custody of the child and the administration of its property. In those particulars both are the same. But how may a court, under the authority conferred upon it by section 581, remove a parent who is exercising the *patria potestad* over the person and property of his minor child and appoint a guardian in accordance with the provisions of section 574 of the person and property of such child?

The question might be answered by pointing out that if the probate court was duly informed that a parent had lost the authority over his minor child, or had lost the parental authority over both the child and its property as provided in articles 169 and 171 of the Civil Code, it could proceed to appoint a regular guardian for both the person and property of the child. It may be true that the probate court would not have the power to deprive a parent who was exercising the *patria potestad* over the person and property of his minor child of either the possession

of the child or its property, and appoint a guardian to take charge of either or both. This, if true, is not, in our opinion, a sufficient reason for excluding from the operation of section 581 those cases pending wherein the affairs of minor children were being administered by their parents in accordance with the former law.

In the final analysis, it seems that protection from the effects of the new law is claimed for the Civil Code guardian because he was exercising his duties *eo nomine*, while the parent and parties dealing with that parent are to be denied that protection because the parent acted under the *patria potestad* or under those provisions of the code relating to emancipation, the child by concession of the parent.

The first premise of the plaintiff's case rests upon the proposition that the parent's right to administer the property of his child has been abolished by the new law of guardianship. This conclusion is reached by determining that this right and the present law of guardianship cover the same subject, that they are repugnant to each other, that they cannot stand together, and that, therefore, the latter case repeals the former. The second premise of the plaintiff's case is that pending cases of *patria potestad* are not within the saving clause of section 581. This conclusion is reached by disregarding the substance of the two methods of caring for the minor children and their property, and clinging to the word forms "*patria potestad*" and "guardianship." In the first premise the intent of the law is the determining factor. In the second premise the intent is disregarded.

But it is asked why the plaintiffs were not given the same status when they are emancipated in 1903 as any other incompetents whose Civil Code guardians had died, resigned, or been removed, inasmuch as the plaintiffs and their mother occupied the same position for the purpose of bringing them within the saving provision of section 581 as a Civil Code guardian and his wards. We have attempted to show that the emancipation of the plaintiffs was not

an interruption of the dependency of the child upon the parent, that the parent did not thereby divest herself of control over the child's property. Hence, there could not follow any such hiatus in the protection afforded the child as occurs by resignation or removal of a guardian so called under the Civil Code. The difference between the status of the two groups of children is clear and fundamental.

We therefore conclude that it was intended by the saving provision of section 581 to withhold the application of the new law from all those cases which were already being taken care of under the provisions of the Civil Code, and that the plaintiffs had full power to charge their estate with the mortgage which they now seek to disaffirm.

Decision Philippine Supreme Court. Record pp. 165 to 170, inc. Case 25,411.

While we do not agree with the conclusion of the Court to the effect that the enactment of the Code of Civil Procedure has had the effect of depriving parents of the right of emancipation in cases in which the relation has been created subsequently to the enactment of that Code, we submit that assuming, for the sake of the argument, the premise established by the Court, the conclusion reached by its reasoning with regard to the interpretation to be given Section 581 of the Code of Civil Procedure is absolutely sound. The same conclusion may also be established by other important considerations, as we shall proceed to demonstrate.

(c) THE RIGHT OF USUFRUCT ENJOYED BY PARENTS UNDER THE CIVIL CODE WAS PROPERTY OF WHICH THEY COULD NOT BE DEPRIVED WITHOUT DUE PROCESS OF LAW.

It is respectfully submitted that any other conclusion than that reached by the lower court in its interpretation of Section 581 of the Code of Civil Procedure would have

made that statute, as it is construed by the lower court, repugnant to the provisions of the Philippine Bill as regards persons who at the time of its enactment were lawfully in the enjoyment of the right of usufruct of the property of their minor children conferred by the Civil Code.

It admits of no dispute that when the Code of Civil Procedure was enacted in 1902 Doña Isabel Palet was lawfully vested with the right of administration and usufruct of the property of her minor children subject to her parental authority. The conclusion in this regard is the same whether we consider the matter from the standpoint of the national law of Doña Isabel Palet and her children or whether we regard it from the standpoint of the law in force in the Philippine Islands, for prior to the enactment of the present Code of Civil Procedure the law of Spain and of the Philippine Islands in this regard was absolutely identical, nor can it be doubted that the right so enjoyed by Doña Isabel Palet and other parents similarly situated was a valuable property right. The usufructuary of the property of another is entitled (Civil Code 471) to the natural, civil, and industrial revenue of the property subject to this right. During the existence of the usufruct the beneficial ownership is vested in the usufructuary, the owner of the property having nothing but the naked title and the expectancy of the reversion of the usufruct. There can, of course, be no doubt that such a right is in many instances of immense value, and that it is property in every sense of the word. The instructions of President McKinley to the Philippine Commission dated April 7, 1900 (Volume 5, Fed. Stat. Ann. [First edition], p. 742), limited the delegated legislative power under which the Philippine Code of Civil Procedure was enacted by the "inviolable rule" that no person should be "deprived of life, liberty or property without due process of law." If

the lower court is correct in its conclusion that the Code of Civil Procedure has repealed by implication those provisions of the Civil Code by which parents were vested with the usufruct of the property of their minor children, to apply the new law to existing rights of usufruct vested under the Civil Code would be to deprive parents enjoying such rights of valuable property, merely by legislative decree. It is not to be assumed that the Philippine Commission intended to disregard the instructions of President McKinley, and Section 581 of the Code, excluding all pending guardianships from its operation, must be construed in the light of what the effect would be were it to be held that its terms are not broad enough to include pending cases of *patria potestas*.

While the argument of expediency is never admissible to modify the express will of the legislature it is permissible to show that one or the other of two conflicting interpretations will be productive of great harm. Were it to be held that the new Code of Civil Procedure did in fact repeal the law conferring upon parents the right of usufruct of their children's estates and that the effect of this repeal was to destroy rights *in esse* at the time of the enactment of the repealing statute, a bewildering mass of litigation between parent and child might befront the Philippine Courts. It is beyond question that the people of the Islands proceeded upon the presumption, justified by the express opinion of the highest court of the country, that pending estates subject to the *patria potestas* were not affected and that parents continued to administer and usufruct the property of their minor children upon that assumption. To reverse the rule at this late day would be to introduce appalling confusion and strife where peace and order now prevail.

(d) THE CODE OF CIVIL PROCEDURE HAS NOT REPEALED BY IMPLICATION THOSE PROVISIONS OF THE CIVIL CODE WHICH RELATE TO THE EMANCIPATION OF MINORS.

While we are fully convinced of the soundness of the conclusion of the lower court as to the effect of the exception contained in Section 581, we are equally convinced that the Court was in error in its conclusion that Section 551 of the later Code has repealed by implication that part of the Civil Code authorizing parents to emancipate their minor children. The practical result will, of course, be the same, whether the ground of the decision be that pending cases of *patria potestas* were exempted from the operation of the implied appeal by the terms of Sec. 581, or that Sec. 551, properly construed, does not amount to a repeal of the old law regarding emancipation of minors by their parents.

A demonstration of the correctness of the conclusion of the Court, while rejecting its reasoning upon this feature of the case, involves a consideration of the *patria potestas* as the institution existed in the civil law of Spain and of the Philippines at the time of the transfer of the sovereignty over the Philippine Archipelago to the United States.

The law on the subject was wholly statutory, and will be found in the Civil Code as Title Seven of Book One (Articles 154 to 180, inclusive) and in Title Eleven of the same Book (Articles 314 to 324, inclusive). From an examination of the text of these sections of the Code, of which a fairly satisfactory translation will be found in Walton's Civil Law in Spain and Spanish America, it will be apparent that the authority (*potestad*) which the Spanish law conferred upon parents related to their control—

- (a) Over the persons of their minor children and to
- (b) Their control over and interest in the property of their minor children.

Don Modesto Falcon in his work entitled "Derecho Civil Español, Comun y Foral" (Vol. One, p. 261), says that the *patria potestas* is

the sum total of all the rights which the law, in harmony with nature, has granted to the father, or, in his default, to the mother, for the control of their unemancipated legitimate and natural children, and the management of their affairs.

Summarizing his analysis of the subject, the same author says (op. cit. Vol. 1, p. 265) of the *patria potestas*:

This authority confers upon the father, or, in his default, upon the mother, the following rights:

1. The right to the obedience of their children during minority, and to their respect and reverence after their emancipation;
2. The right to have their children live in their company;
3. The right to represent them in judicial proceedings;
4. The right to consent to the acts performed, and contracts entered into by them;
5. The right to correct and punish them in moderation;
6. The right to give consent to or advice concerning the marriage of their children;
7. The right to become the owners of certain of their children's earnings, and of the revenue of their children's property in the manner hereinafter explained;
8. The right to administer the property of their children.

It is evident, therefore, that the *patria potestas* confers a number of rights, each independent of the other. It must be conceded, upon consideration, that no one of these rights, considered apart from the others, is so essential to the existence of the *patria potestas* as an institution

that its withdrawal would necessarily carry with it the disappearance of all or any of the others. For instance, the repeal of Chapter 3 of Title 7 of Book 1 of the Civil Code (Articles 159 to 166, inclusive), which deals with the "Effects of the *Patria Potestas* with respect to the Property of Children," would not carry with it, by necessary implication, the repeal of Chapter 2 of that Title which deals with the "Effect of the *Patria Potestas* with respect to the Persons of the Children." Therefore, even if it were to be admitted that Articles 551, 552 and 553 of the Code of Civil Procedure (Act 190 of the Philippine Commission) must be construed as depriving parents of the right of usufruct and administration of their children's property enjoyed under the Civil Code, this would not imply a repeal of the power of emancipation conferred by Section 316 of the Civil Code, and which clearly pertains to that branch of the *patria potestas* which relates to the control of parents over the persons of their children rather than that which pertains to their interest in and control over the property of such children.

The Civil Code contains in itself intrinsic evidence of the belief of the legislature that the *patria potestas* was not a unit which must exist intact or not at all, but rather a congeries of rights and obligations, some of which might be withdrawn without affecting the others.

Article 171 of the Civil Code reads as follows:

The Courts may deprive parents of the *patria potestas*, or suspend its exercise, if they should treat their children with excessive severity, or give them corrupting orders, advice, or examples.

In these cases they may also deprive parents wholly or partially of the usufruct of the property of their children, or take such measures as they may deem conducive to the interests of the latter.

It is evident from the terms of this article that before the enactment of the Philippine Code of Civil Procedure

the courts were authorized, in the prescribed cases, to deprive parents of the custody of their children or the enjoyment of the usufruct of their property. The withdrawal of either of these privileges from the offending parent would leave the other intact. The parent from whom the right of usufruct or administration of his children's property has been withdrawn would not, we submit, have been thereby deprived of the right to emancipate them. The power of emancipation pertains more to that branch of the *patria potestas* under which parents exercise control over the persons of their children, than to that which relates to the control of their property. In the vast majority of instances, children under the *patria potestas* possess no property to which the interest of the parent could attach. Consequently even were it to be finally determined that Section 553 of the Code of Civil Procedure, because of its declaration that the guardianship of the estate of the child does not pertain as of right to the parent, has indeed repealed that part of the Civil Code (Articles 159 to 172) by which parents were endowed with the right of administration and usufruct of such estates, we submit that it would not necessarily follow that parents were thereby deprived of the right to emancipate their minor children.

The lower court (Decision, Rec. pp. 159 to 162, inclusive, Case 25,411) was of the opinion that Section 551 of the Code of Civil Procedure has repealed by implication those provisions of the Civil Code relating to the administration and usufruct by parents of the property of their children. The gist of the argument is that it is evident from a perusal of Sections 551, 552 and 553 of the Code of Civil Procedure that the Philippine Legislature intended to include within their provisions, relating to the guardianship of minor children, those whose parents were alive as well as those not enjoying such natural protection.

The Court correctly states that under the Civil Code guardianship was something entirely distinct from the *patria potestas*, and that it was only children not subject to the *patria potestas* who could be brought under guardianship. The Court concludes:

The truth is that the *patria potestas* and the present law of guardianship cover the same subject, *i. e.*, the custody and the care of the persons and property of minor children whose parents, or one of them, is living. * * * The provisions of the two laws are entirely repugnant to each other; they are totally irreconcilable if any proper respect is to be had for the language used in the latest law and the evident intention of the legislative department in enacting it. The former must therefore yield to the latter.

Strictly speaking, this part of the decision of the lower court is *obiter dicta*, for this case does not here, or did it below, present any issue regarding the right of a parent under the law now enforced in the Philippine Islands to enjoy the administration or usufruct of the property of a minor child.

The questions were: (1) whether under the present law a parent may emancipate a minor child; and (2) if the first question be answered in the negative with respect to cases arising after the enactment of the Code of Civil Procedure, whether the provisions of that Code can be construed as depriving of that right parents already in the enjoyment of it under the Civil Code when the latter law was enacted.

But while, being merely *obiter*, it is not of great importance to dispute this particular conclusion of the lower court, we cannot refrain from expressing our dissent from it and our belief that there is no such irreconcilable conflict between the old law and the new as to work a repeal by implication of the former in respect to the rights of a parent to the administration and usufruct of the property of his minor children.

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A careful examination of Sections 551, 552 and 553 of the Code of Civil Procedure will disclose that the only Article of the Civil Code which is really affected by those Sections is Article 159, and that only with respect to the *form* of exercising the right which this article establishes in favor of parents with respect to the administration of the property of their minor children. Section 551 confers upon Courts of First Instance the discretionary authority to appoint guardians for minors who have no guardians legally appointed when such appointment appears to be necessary or convenient. Section 552 deprives the family council of the power to appoint guardians. Section 553 is the only one which, under any possible interpretation, can be in any manner regarded as affecting the institution of *patria potestas*. It reads as follows:

SEC. 553. *Father or Mother Natural Guardian and to be appointed Guardian of Estate, if Competent.* The father, or in case of his death or legal disqualification, the mother, is to be deemed the natural guardian of the child, and as such is entitled to the custody, and care for the education, of the minor, but not of his estate, unless so ordered by the court. It shall be the duty of the judge, in the appointment of a guardian of the estate of a minor child, to appoint the father or mother or near relative of the child, preference being given in the order just named; but the court shall have the power to set aside the order of preference herein provided and to appoint any suitable person as guardian, either of the person or of the estate of the minor, or both, as the best interests of the child may require. The authority of the guardian shall not be extinguished or affected by the marriage of the guardian.

Sec. 553, Act 190 Phil. Com.

An analysis of Section 553, we submit, will show that there is no necessary conflict between its provisions and those of the Civil Code relating to the relation of parent

and child, and that it merely modifies the *form* of the exercise of one of the rights inherent in this relation, namely: that enjoyed by parents with regard to the administration of the property of their children. Section 553 recognizes the right of the father, or in case of his death or incapacity, of the mother, to have the minor children in his or her custody and control for the purpose of educating them. This section also provides that although parents have no absolute right to the administration of the property of their children, it is nevertheless the *duty* of the judge to confer upon them the authority necessary for this administration unless for special reasons the Court should be convinced that the interests of the minor require the appointment of some other person. A law which, as does Section 553 of the Code of Civil Procedure, declares that the father is not entitled to the administration of the property of his children unless the Court so orders, but immediately thereafter declares that it is the *duty* of the judge to grant this administration to the father unless for special reasons he should deem it necessary, in the interest of the minor, to appoint some other person, is, to all practical intents and purposes, the same as a law which declares, as does Article 159 of the Civil Code, that the father is the legal administrator of the property of his children subject to his *potestas*, and then authorizes the courts, as does Article 171 of the Civil Code, to deprive the father of the *patria potestas*, and consequently of the power of administration of such property, whenever in the judgment of the Court such action is necessary for the benefit of the children. It also appears evident that the only difference between the two systems is that under the system of the Civil Code the right of administration is exercised without the necessity of first obtaining judicial authorization to that end, whereas, under the provisions of the Code of Civil Procedure, it is

necessary to obtain such authorization, the granting of which is a mere matter of form.

One of the most important rights which the Spanish civil law vests in parents with respect to the property of their children is that of enjoying the usufruct of such property, which is co-relative to the obligation of giving them support. We contend that there is nothing incompatible between compliance with the formality of obtaining judicial authority for the administration of the property of one's children and the enjoyment of the right to the usufruct of such property conferred upon parents vested with the *patria potestas* under the Civil Code.

Even were the Court to appoint some other person than the parent as guardian of the property of the child, it would not of necessity follow that the parent would be deprived of his right to the enjoyment of the revenue of the child's estate, unless expressly deprived of it by the Court in the exercise of the authority to that end conferred by Article 171 of the Civil Code.

(e) EVEN IF IT BE HELD THAT THE NEW CODE OF CIVIL PROCEDURE OF THE PHILIPPINE ISLANDS HAS REPEALED BY IMPLICATION THOSE PROVISIONS OF THE CIVIL CODE RELATING TO THE ADMINISTRATION AND USUFRUCT BY PARENTS OF THE PROPERTY OF THEIR MINOR CHILDREN, IT HAS NOT REPEALED THE PROVISIONS OF THE CIVIL CODE RELATING TO EMANCIPATION.

The lower court, having established the premise of the repeal by implication of those provisions of the Civil Code relating to the administration and usufruct by parents of the property of their minor children (Rec. p. 162, Case 25,411), says:

The provisions of the new Code of Civil Procedure on guardianship being applicable to minor children whose parents, or one of them, are still living, it is

clear that these articles of the Civil Code relating to the emancipation of minors by their parents are also, partially at least, repealed. By reference to these articles (314-319), it will be noted that by emancipating his child the parent surrenders to it the right to the usufruct and administration of his property. This, of course, is based upon the *a priori* condition of the law of the *patria potestas* that the parent has the usufruct and administration of the child's property to give, which we have seen, he no longer has. Not having a right in the child's property, the formal emancipation of a minor child by the parent cannot now have the effect prescribed in Articles 314-319 of the Civil Code. For were this power of emancipating his minor child still retained by the parent, the latter could, by the exercise of it, deprive the court guardian of the administration and control of the estate, or in other words the court proceedings with reference to the persons and property of minor children would by the parent's act be annulled.

The Court then proceeds to show that

the *patria potestas* of the Civil Code with respect to the persons of minor children is not inconsistent with the natural law of guardianship.

Rec. p. 163, Case 25,411.

With the last cited part of the conclusions of the lower court we are entirely in accord, but we believe it is in error in its conclusion that the elimination of the right of administration and usufruct would by necessary implication carry with it the loss of the power of emancipation in all cases.

Repeals by implication not favored.—It is, of course, axiomatic that a later law will not be held to have repealed an earlier expression of the legislative will unless the repugnance between the two statutes is so marked that by no reasonable construction can they be reconciled. The intention of the legislature to repeal the old law must be

as plainly apparent as though it had been in terms expressed.

We have even stronger grounds than those usually existing for invoking in this case that principle of interpretation of statutes which imposes upon courts the duty of avoiding by all reasonable means such a construction of the law as will lead to a repeal by implication, inasmuch as the Court is here asked to hold that there had been a repeal by implication of a statute relating to one of the most important institutions known to the Philippine substantive law of domestic relations. In the interpretation of a code of civil procedure, which should contain matters of adjective law only, it will not be readily assumed that the legislature intended to repeal by implication the fundamental principles of the rules of law governing the relations of parent and child, especially when we bear in mind that the Commission by which that Code was enacted derived its powers at that time from the instructions of President McKinley, dated April 7, 1900, in which the commissioners were warned that the main body of the laws which regulate the rights and obligations of the people was to be maintained with the least possible change, and that such modifications as might be found necessary should be made principally in matters of procedure.

Fed. Stat. Ann. (1st ed.) Vol. 5, p. 744.

(f) EMANCIPATION NOT DEPENDENT UPON THE EXISTENCE OF PROPERTY.

We contend that the error of the lower court lies in its assumption that the power of emancipation

is based upon the *a priori* condition of the law of *patria potestas* that the parent has the usufruct and administration of the child's property to give. * * *

We submit that there is nothing in the language of the Civil Code provisions relating to emancipation to justify this inference. The pertinent articles are:

ART. 314. Emancipation takes place: (1) By the marriage of the minor; (2) by attainment of majority; (3) by concession of the father or of the mother exercising the *patria potestas*.

ART. 315. Marriage effects emancipation *de jure*, with the limitations established by Art. 59 and the third paragraph of Art. 50.

ART. 316. The emancipation to which paragraph three of Art. 314 relates shall be granted by public instrument. * * *

ART. 317. Emancipation empowers the minor to control his person and property, but until he attains his majority an emancipated minor may not borrow money, or encumber or sell real property without the consent of his father, or, in default of the latter, of his mother, or failing both, that of a guardian. Nor may he be a party to an action without the joinder of such persons.

ART. 318. In order that emancipation may take place by grant of the father or of the mother it is necessary that the minor be over the age of eighteen years and that he consent thereto.

ART. 319. Emancipation once granted may not be revoked.

Emancipation, it will be observed, is a term used by the law to cover all the various modes by which minority is ended, grant by the parent being but one of them.

There is absolutely nothing in any of the articles of the Civil Code above cited, which are the only ones bearing upon the subject, which will justify the inference that parents cannot emancipate their children by voluntary concession unless such children have property, the administration and usufruct of which may be renounced by the parent. All that is necessary is that the parent shall at the time of making the grant be in the enjoyment of the

patria potestas. This may or may not include the usufruct of property, according to whether the child subject to the *potestas* possesses or does not possess property to which that right can attach. There is nothing, we submit, in the articles relating to emancipation which would have been effected had the legislature expressly repealed the whole of chapter 2 (Articles 159 to 166, inclusive) of Title 7 of Book 1 of the Civil Code.

With respect to the argument that the power of voluntary emancipation might deprive a guardian appointed by the Court of his control of the person or property of a minor, the answer is that Articles 314 to 319 of the Civil Code determine the conditions upon which minority ceases. Minority ceases, by the terms of Article 314 (*supra*), not only by the attainment of the age of majority (Article 320), but equally by marriage or by parental grant. A married person under the age of twenty-three is no longer a *minor*. Neither is a person over eighteen or under twenty-three upon whom the parent has conferred the grant of majority. As Bar says in his work on Private International Law,

Such a case has to be regarded * * * in the same light as if the *lex domicilii* appointed an earlier age as the initial age of majority for all its subjects.

Bar, *Pri. Int. Law*, Par. 149.

Now, the Code of Civil Procedure (Act 190) nowhere attempts to define minority. In its provisions relating to the subject of guardianship, it authorizes the court to appoint guardians for "minors." But for the purpose of ascertaining who are minors we must have recourse to the Civil Code. An examination of the Code shows that adults are persons over the age of twenty-three years or persons who, being over the age of eighteen years, have received, with their consent, the grant of majority, or who have married.

For none of these persons could the Court appoint a guardian under the Code of Civil Procedure. As to persons for whom guardians have been appointed during minority such guardianship must be held to cease as soon as their minority ceases in either of the manners recognized by the Civil Code (Article 314) as producing emancipation. A special exception is made by Article 575 of the Code of Civil Procedure with regard to marriage, the rule being that the marriage of the minor ward terminates the guardianship of the person of such ward but not that of the estate.

(g) THE EMANCIPATION OF THE APPELLANTS, JOAQUIN IBAÑEZ DE ALDECOA AND ZOILO IBAÑEZ DE ALDECOA, WAS VALID IN POINT OF FORM.

It was contended in the court below that the documents by which the appellants were emancipated were not "public instruments" within the meaning of Article 316 of the Civil Code. On that subject the lower court said (Rec. p. 170, Case 25,411):

It is urged finally that admitting all else, emancipation of the plaintiffs could not be valid because the admitted emancipation was not contained in a public instrument, as required by Article 316 of the Civil Code. This article provides that the emancipation by the concession of the father exercising the *patria potestad* shall be granted by a public instrument or by an appearance before a municipal judge. In the case at bar the emancipation documents were acknowledged and duly executed before a notary public in 1903. The notary public exercised his authority not by virtue of the Spanish law, but under authority of Act No. 136. A document acknowledged before a notary public, in accordance with the provisions of an act of the Philippine Commission, is a public instrument within the meaning of Article 1924 of the Civil Code. (Gochico v. Ocampo, 7 Phil. Rep. 15; Soler v. Alzoua,

8 Phil. Rep. 539; *De la Rama v. Robles*, 8 Phil. Rep. 712; *McMicking v. Kimura*, 12 Phil. Rep. 98.) The phrase referred to in Article 1824 of the Civil Code and which was brought in question in these cases reads: "In a public instrument"—"escritura publica." Exactly the same words, "excritura publica," are used in Article 316. If a document which was acknowledged before a notary public appointed under an act of the Commission, was a public document within the meaning of that phrase in Article 1924, it certainly must be held to be a public document within the meaning of that phrase in article 316, as both are exactly the same.

Rec. p. 170, Case 25,411.

The same result follows if the validity of the emancipation be tested by the national law of the appellants. The Spanish Civil Code expressly recognizes the principle *locus regit actum*. Article 11 of that Code declares that

The forms and solemnities of contracts, wills and other public instruments are governed by the laws of the country in which they are executed.

POINT TWO.

THE APPELLANTS JOAQUIN AND ZOILO IBÁÑEZ DE ALDECOA AND THEIR MOTHER DOÑA ISABEL PALET ARE SUBJECTS OF THE KINGDOM OF SPAIN.

In the court below it was contended by these appellants that they were possessed of the political status of Filipinos, having been born in the Philippine Islands, and that as such the determination of their status as minors or majors was to be governed by the law of the Philippine Islands. We have already demonstrated that the decision of the lower court is correct under the Philippine law, both upon the reasoning actually employed by the Court, and upon other grounds which might be relied upon. We shall now proceed to demonstrate that the pleadings and proofs show that these appellants are in fact foreigners, subjects of the Kingdom of Spain, that under the law of the Philippine Islands the status and capacity of foreigners is to be determined by their national law, and that under the national law of these appellants they were validly emancipated by their mother, and therefore capable of binding themselves by the contract here in dispute.

While the cancellation suit brought against the Hong Kong Banking Corporation by Joaquin and Zoilo Aldecoa was pending on appeal in the Supreme Court of the Philippine Islands counsel for the respective parties signed and submitted to that Court, in Spanish, a stipulation of facts translated in the record in the following terms:

Now come plaintiffs in this case and defendant, the Hong Kong and Shanghai Banking Corporation, through their respective attorneys before this Honorable Court and respectfully state:

That for the purposes of the decision in this case the parties litigant above mentioned have agreed that

the facts hereinafter stated are true and ask this Court to consider them as if they have been included as proven facts in the decision of the lower court:

1. That plaintiffs Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa were born in the Philippine Islands on March 27, 1884, and July 4, 1885, respectively.

2. That said plaintiffs are the legitimate children of the deceased Don Zoilo Ibañez de Aldecoa and of Doña Isabel Palet, his widow.

3. That said Zoilo Ibañez de Aldecoa, now deceased, and his widow Doña Isabel Palet were both Spaniards, natives of Spain, born of Spanish parents.

4. That the deceased Don Zoilo Ibañez de Aldecoa, father of said plaintiffs, being a resident of and domiciled in the Philippine Islands, died in Manila on October 4, 1895.

5. That Doña Isabel Palet, viuda de Aldecoa, mother of these plaintiffs, being a resident of and domiciled in the Philippine Islands, by reason of her poor health left the Philippine Islands on or about the year 1897 and was absent from said Islands until the year 1902, when she returned to the same and preserved her domicile therein until the year 1906.

6. That plaintiffs Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa were absent from the Philippine Islands in the company of their mother from the year 1897 until they came back to the Islands on or about the year 1902, where they had been continuously residing and have at present their legal residence.

7. That plaintiffs Joaquin and Zoilo Ibañez de Aldecoa from the time of their return to the Philippines in the year 1902, have several times stated before the judicial authorities and before the administration officials to be Filipinos and as such they have obtained passports from the American administrative and consular authorities.

Rec. p. 155, Case 25,411.

This stipulation was approved by the Supreme Court by order dated February 7, 1912 (Rec. p. 156, Case 25,411),

and it is in effect incorporated into the findings of the lower court in its decision in the cancellation case (Rec. p. 158). Practically the same facts are included in the findings of the trial court (Par. V) in its decision in the foreclosure case (Rec. p. 375, Case 25,412) and in the decision of the Supreme Court of the Philippine Islands upon appeal in the foreclosure case (Rec. 394, Case 25,412).

It is respectfully submitted that upon the facts thus uncontrovertibly established the appellants Joaquin and Zoilo Aldecoa are clearly shown to be Spanish subjects.

(a) DOÑA ISABEL PALET WAS A SPANISH SUBJECT WHEN SHE LEFT THE PHILIPPINE ISLANDS IN 1897 AND HAS RETAINED HER SPANISH NATIONALITY.

As Mrs. Isabel Palet was a native of Spain and was the wife of a native of Spain and both of them were of Spanish parentage (Rec. p. 25, Case 25,411) there can, of course, be no doubt that she possessed the same national character when she left the Philippine Islands in 1897 with her sons Joaquin and Zoilo. In fact it has been expressly stipulated in open court that

Doña Isabel Palet is a native of Barcelona, Spain, and is now and has at all times mentioned in this suit been a subject of the Kingdom of Spain.

Rec. p. 156, Case 25,412.

The truth of the facts covered by this stipulation was expressly admitted by Mr. Miranda, the attorney who appeared at the trial of the case for Mrs. Palet and her children.

Rec. p. 156, Case 25,412.

The year following Mrs. Palet's departure from the Philippines with her children, the appellants, the war between the United States and Spain occurred, resulting

in the cessation of Spanish sovereignty in the Philippine Islands under the terms of the Treaty of Paris. Article 9 of the Treaty of Paris provided that Spanish subjects, natives of the Peninsula, who may elect to remain in the ceded territory

may preserve their allegiance to the Crown of Spain by making before a Court of Record, within a year from the date of exchange of the ratifications of this Treaty, a declaration of their intention to preserve such allegiance, in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory within which they may reside.

As Mrs. Isabel Palet did not return to the Philippine Islands with her sons until 1903 she was absent during the entire period within which *resident* Spanish subjects in the Philippine Islands were required to take affirmative action to retain their Spanish nationality. This Court, in the case of *Bosque v. U. S.*, 209 U. S. 96, has held that under such circumstances Spanish nationality is retained by the absentee Spanish resident regardless of the retainance of the Philippine *domicile*. In that case the Court said:

* * * plaintiff was absent from the Philippines during the whole period allowed for making such declaration, and remained away several months after its expiration. It follows that he did not become a citizen of the Islands under the new sovereignty, but that he continued to remain a Spaniard. The fact that he intended to return does not affect this conclusion. It was not necessary, in order to retain his Spanish nationality that he should remain away permanently, and he was absent for more than a year and a half.

This case is directly in point and, it is submitted, absolutely conclusive as regards the national status of Doña Isabel Palet.

(b) RETENTION OF SPANISH NATIONALITY BY THE FATHER OR MOTHER IMPLIES THE RETENTION OF THE SAME NATIONALITY BY THE MINOR CHILDREN OF SUCH PARENTS.

The stipulation and findings establish the fact that the appellants Joaquin and Zoilo Aldecoa were born in the Philippine Islands in the years 1884 and 1885, respectively; that they departed from the Philippine Islands with their widowed mother, Mrs. Isabel Palet, in 1897 and returned with her to the Islands in 1903. In the lower court it was contended by opposing counsel that the appellants are Filipinos because they were born in the Philippine Islands. It is not believed that any authorities can be cited in support of this contention. The contrary proposition, however, is well established.

This question has come up several times in the Federal Court of Porto Rico. The jurisdiction of that court depends in many instances upon diversity of citizenship of the parties litigant and, as is to be expected, in many cases the jurisdiction of the Court has been attacked on the ground that the alleged diversity of citizenship did not exist. This question arose in the case of *Martinez de Hernandez v. Castro*, 2 Porto Rico Fed. Reps. 523, in which the Court, after having carefully considered the argument of counsel for the party attacking the Court's jurisdiction upon the ground that with respect to persons born in Porto Rico their parents were unable to deprive them of the nationality of that territory by means of a declaration of their intention to preserve Spanish nationality, held that the only reasonable interpretation which could be given to Article 9 of the Treaty of Paris was that it confers upon the Spanish subject not only

the privilege of retaining his own allegiance to the Spanish crown, but also that of his wife and their minor children.

In another decision of that Court involving the same question, *Maria Rios de Rubio v. Victor Burset*, 2 Porto Rico Fed. Reps. 192, it was held that

It certainly is within the meaning of the Treaty that when a man, being, in the language of Article 9, a Spanish subject, native of the peninsula, preserved his Spanish citizenship under that article, it carried with him the citizenship of his wife, whether or not he mentioned her in his declaration.

The Supreme Court of the Philippine Islands, in passing upon the application of Don José Arnaiz for permission to take the bar examination, upon evidence that although petitioner was a native of Cuba, his father was a native of the Spanish peninsula, and a resident of the Philippine Islands during all the period allowed by the Treaty of Paris, who, having failed to declare his intention to preserve his Spanish nationality, had acquired that of the Philippine Islands, said:

Whereas by virtue of the provisions of Article 18 of the Civil Code, applicable to the case before us, a child under parental authority (*patria potestas*) follows the nationality of his own father, and Tomas Arnaiz having acquired citizenship in these Islands, it follows necessarily that his son, José, who like the former has ceased to be a Spaniard, has also become a citizen of the Islands,

Held, that the petitioner, José Arnaiz, is qualified to enter the examinations required for admission to the bar.

The action of the Court in the Arnaiz case was not reported, and the citation from the resolution is copied from the original record in the files of the Philippine Supreme Court.

(c) THE APPELLANTS JOAQUIN AND ZOILO IBAÑEZ DE ALDECOA HAVE NOT BECOME CITIZENS OF THE PHILIPPINE ISLANDS.

Although in our opinion it would make no difference in the decision of the questions involved had the defendants Joaquin and Zoilo Ibañez de Aldecoa subsequently acquired the political status of Filipinos, because having once become vested with contractual capacity by emancipation conferred in accordance with their national law, the change of nationality would not divest them of that capacity, it is nevertheless not wholly beside the mark to point out that no such change of nationality has been possible. It is stipulated of record that these defendants ever since their return to the Philippine Islands in 1902 have stated whenever the occasion presented itself that they were Filipinos, (Rec. p. 156, Case 25,411) and that these statements have been accepted as true by some of the administrative and consular officers of the government. The fact that such officers may have fallen into error in this respect is not in itself, of course, sufficient to change the national status of these defendants. After the cession of the Philippines by Spain to the United States the power to authorize the acquisition of the nationality of the territory by persons not vested with it under the terms of the Treaty of Paris pertained solely to Congress. Consequently Article 19 of the Civil Code, which provides that children of foreign parentage born in Spanish territory should be given the right of election as to whether they shall retain the nationality of their parents or that of the territory of their birth upon obtaining their majority, must be deemed as repealed by the mere change of sovereignty, inasmuch as the subject matter of the article pertains to purely political rather than to private law.

POINT THREE.

THE EMANCIPATION OF THE APPELLANTS JOAQUIN AND ZOILO IBAÑEZ DE ALDECOA WAS VALID UNDER THEIR NATIONAL LAW.

On July 31, 1903, while in the city of Manila, Philippine Islands, Mrs. Isabel Palet, being at that time a widow, executed in behalf of her sons Joaquin and Zoilo Ibañez de Aldecoa the deeds of emancipation introduced in evidence as plaintiff's Exhibits T and U (Rec. pp. 203 to 204, Case 25,412). At that time Joaquin and Zoilo Ibañez de Aldecoa were each over the age of eighteen years. They expressed their acceptance of the emancipation by signing the instruments in which the grants were recorded.

Findings, Trial Court, Rec. p. 374, Case 25,412.

One of the instruments in question, which are drawn in identical terms, except with regard to the names of the parties, has been set out in full in the general statement of facts (*Ante*. p. 8).

The law in force in Spain after the cessation of the Spanish sovereignty in the Philippine Islands being foreign law, and not open to judicial notice, evidence was introduced at the trial in behalf of the Hong Kong Banking Corporation for the purpose of showing that the emancipation of Joaquin and Zoilo Ibañez de Aldecoa was valid and binding under their national law. For that purpose we introduced as one of our witnesses the late Dr. Rafael Del Pan, an eminent authority on the Spanish law, and then a number of the Code Committee appointed by the Governor General to revise the Philippine Codes. It was admitted in open court by counsel for Joaquin and Zoilo Ibañez de Aldecoa that Dr. Rafael Del Pan has a thorough knowledge of the Spanish laws and that he is

a graduate of the University of Madrid and a Doctor of Laws in that University, qualified by his knowledge of law to practice in the kingdom of Spain. (Rec. p. 162, Case 25,412.)

Dr. Rafael Del Pan testified in response to the inquiry as to what was the law in force in Spain in 1903 with regard to the power of parents to emancipate their children as follows:

A. Practically the same rules were in force as those which are embodied in the Civil Code now in force in these Islands, but without the modifications in that Civil Code which have been introduced in it in the Philippine Islands since the change of sovereignty by the various acts of legislation of the Philippine Commission, and subsequently by the Philippine Assembly.

Q. Please examine this volume which I show you and which purports to be a copy of the Civil Code, and indicate to us the articles of that Code relating to emancipation, which were in force in Spain in the year 1903.

A. Article 167, second paragraph, of the Civil Code, provides for the termination of the *patria potestas* by means of emancipation. Article 314, in connection with the article just referred to, provides the manner by which the emancipation may be effected; and these methods of emancipation are: The marriage of the person to be emancipated; his coming of age; and by grant or concession of the father or mother exercising the parental authority or *patria potestad*. And articles 315 to 319, inclusive, determine the effects of emancipation. There are other provisions apart from these which I have just referred to, and which are those directly applicable to the matter, others scattered through the law which incidentally bear upon the matter.

Q. According to the law in force in the Kingdom of Spain in 1903, under what circumstances was the mother entitled to exercise parental authority, or the *patria potestad* as it was called in the Spanish law?

A. The *patria potestad* is exercised by, and corresponds to, the mother upon the death or incapacity of the father.

Q. Is the exercise by the mother of the power of *patria potestad*, in force in Spain in 1903, over her minor children, absolute and unqualified?

A. Yes, sir; so absolute and unqualified that the power vests in the mother immediately upon the death of the father of the children, without the necessity of any formal declaration. Before the Civil Code was enacted in Spain the mother was entitled to the guardianship of the persons and property of her minor children very much as she is under the law now in force in the Philippine Islands, but this was changed by the provisions of the Civil Code which conferred upon her the *patria potestad* upon the death of the husband.

Q. Article 9 of the Civil Code, now in force in the Philippine Islands, reads as follows: "Las leyes relativas a los derechos y deberes de familia, o al estado, condicion y capacidad legal de las personas, obligan a los espanoles aunque residan en pais extranjero." (The laws relative to family rights and duties or to the status, condition and legal capacity of persons are binding on Spaniards, even though they reside in sovereign countries.) Can you inform us whether or not this provision or a similar or identical provision was in force in the Kingdom of Spain in the year 1903?

A. According to my recollection, identical.

Q. Under the laws in force in the Kingdom of Spain in 1903, up to what time were children subject to the *patria potestad*? In other words, when did the *patria potestad* cease?

A. On arriving at 23 years of age or, that is to say, the limit of minority; or, in case of emancipation by concession of the father, or in his absence or defect by the mother, after the child had reached the age of 18 years.

The Court will take judicial notice of the fact that the Civil Code in force in the Philippine Islands at the time of

the cession of Spanish sovereignty was first promulgated in Spain and later extended to the Spanish Colonies, including the Philippine Islands. The provisions of the Code relating to the emancipation of minors, which, Dr. Rafael Del Pan has testified, was still in force in 1903, are as follows:

ARTICLE 167. Parental authority (*patria potestas*) is terminated (1) by the death of the parents or of the children; (2) by emancipation; (3) by the adoption of the child.

ARTICLE 314. Parental authority is also terminated: (1) by the marriage of the minor; (2) by the attainment of majority.

ARTICLE 316. The emancipation to which paragraph 3 of Article 314 refers must be granted by public instrument or by appearance before the municipal Judge, and must be noted in the Civil Register until which time it will not produce effects against third persons.

ARTICLE 317. Emancipation empowers the minor to control his person and property as though he were of age, but until he attains his majority, an emancipated minor may not borrow money or sell real property without the consent of his father, or in defect of the latter his mother, or in defect of both of a guardian, nor may he appear in court without the assistance of said persons.

ARTICLE 318. In order that emancipation by the concession of the father or mother may take place it is necessary that the minor shall have attained the age of eighteen years, and that he consent to it.

ARTICLE 319. Emancipation once granted may not be revoked.

The parental authority of the mother over her minor children upon the death of their father is conferred by the following provisions of the Spanish Civil Code:

ARTICLE 154. The father or failing him the mother have authority (*potestas*) over their emancipated legitimate children. * * *

Article 168 of the Code provides that the mother loses the power of parental authority over her children if she contracts a second marriage, unless her deceased husband, the father of said children, has otherwise directed by will.

The emancipation was effected, as required by Article 316, by public instrument. While there is some little difference between the external formalities of public instruments when they are drawn in Spain pursuant to the notarial law of that country and the documents authenticated by a Notary Public in the Philippine Islands, the Philippine Supreme Court has held that such documents are public instruments within the meaning of that term as used in the Civil Code.

Gochico *v.* Ocampo, 7 Phil. Reps. 15.

McMicking *v.* Kimura, 12 Phil. Reps. 98.

(a) THE POWER OF A SPANISH PARENT TO EMANCIPATE A MINOR CHILD SUBJECT TO THE PATRIA POTESTAS MAY BE EXERCISED ABROAD.

Article 9 of the Spanish Civil Code in force in Spain in 1903 (testimony of Dr. Rafael Del Pan, Rec. p. 163, Case 25,412) and in the Philippine Islands reads as follows:

The laws relative to family rights and duties or the status, condition, and legal capacity of persons are binding upon Spaniards, even though they reside in foreign countries.

Sr. Manresa, without exception the most frequently quoted and authoritative commentator on the Spanish Civil Code, in his commentary upon Article Nine, says:

Family duties, rights, status, condition, and capacity of Spaniards in foreign countries.—They are governed by their national law, in harmony with the provisions of the codes of France, Italy, Vaud, Friburg, and Bolivia. * * * With regard to the *patria potestas*, it is one of its effects to confer upon the parents enjoying it, in the form and under the circumstances

determined by the code, the usufruct of the property of their children. It is also unquestionable that this faculty pertains to the personal statute, and that a Spaniard is entitled to the usufruct of the property of his children, even though it be situated in a country which does not recognize this right. * * *

Family duties, rights, status, condition and capacity of foreigners in Spain.—The Code, which expressly deals with the real and formal statutes with respect to foreigners residing in Spain says nothing regarding their personal statute, except with regard to personal property. In almost all codes which have taken the French code as a model the same omission is to be observed. We believe in this case the personal statute should be applied, for the following reasons: (1) Article 14 of the Civil Code says: "In accordance with the provisions of Article 12 that which is established in Articles 9, 10, and 11 with respect to persons, acts, and property of Spaniards abroad and of foreigners in Spain is applicable * * * to Spaniards in provinces or territories of different civil legislation." (2) The legal doctrine of the Supreme Court. This high tribunal in its decision of November 6, 1867, held that the personal statute "must govern all civil acts affecting the person of the foreigner, he being subject to the laws of the country of which he is a subject, by which are to be decided all questions regarding his * * * capacity." * * * In its decision of January 29, 1875, the Court held that "the law of the country to which he belongs is the personal law of the individual, which follows him wherever he may go, governing his personal rights, his capacity to transmit property by will or *ab intestato* * * *;" and in the decision of January 13, 1885, that "It is a doctrine of Private International Law that the foreigner is accompanied by his status and his capacity, and the personal laws of his country should be applied to him."

In his commentary upon Article Nine of the Spanish Civil Code the writer, whose work is published under the pseudonym of Q. Mucius Scaevola, says:

The laws which this article mentions follow Spaniards into every country in which they may be found. As they directly affect their personality they always carry them with them, so to speak, and such laws have, therefore, absolute extraterritoriality. They are *personal laws*—so called, because, as Laurent says, they accompany him and do not leave him so long as he retains the nationality from which they are derived. Thus, for example, one who is a minor in Spain will not be a major in France because majority in that country is acquired at an earlier age than here. The *patria potestas* is acquired and lost by a Spaniard in a foreign country by the facts and causes established by the legislation of our country. * * *

The article only speaks of Spaniards—that is to say, of the law which is to govern their capacity beyond Spanish territory, but says nothing regarding foreigners in Spain. This omission is covered, as Sr. Manresa points out, by Article 14, which speaks of the provisions of Articles 8, 10, and 11 with reference to foreigners in Spain, and by decisions of the Supreme Court. But in our opinion, even in the absence of these positive precepts, it would be equally necessary to consider the provisions of Article 9 applicable to foreigners, because of the fundamental principle of the personal statute. The essence of this is that the foreigner's capacity, according to his national law, follows him wherever he may go. Consequently the foreigner in Spain is governed by his national law, and it is so declared by some codes, among them the codes of France, Portugal, Italy and Mexico, which contain provisions similar to that of our Article Nine. * * *

The precept of this article, as well as of the two following articles, rests upon the theory of the statutes, real and personal, which is also the basis of the decisions of the Supreme Court. We shall therefore cite several decisions which are, to a certain extent, to be regarded as positive law, as they establish a doctrine in all respects identical with that of the Civil Code, of which they are the antecedents.

* * *

Decision of November 6, 1867.

It is a general rule admitted by the nations, with but few exceptions, that the personal statute, in the absence of a specific treaty, must govern all civil acts affecting the person of the foreigner, he being subject to the laws of the country of which he is a subject, by which are to be decided all questions regarding his aptitude, capacity, and personal rights, because otherwise great confusion would result, and it would be easy to elude the national law which protects the rights of subjects, and at the same time imposes upon them correlative obligations.

Decision of January 13, 1873.

It is the doctrine of Private International Law that the foreigner's status and capacity follow him, and that the laws of his country should be applied to avoid inconveniences which would follow were he not to be judged by a single legal standard, when it is not contrary to the interest of the nation in which he makes his demand.

The French authorities take the same view as to the interpretation of Article 3 of the French Civil Code, from which Article 9 of the Spanish Civil Code is copied.

In Baudry-Lacantiniere's encyclopedic work on the French Civil Law the author says on this subject:

Par. 199. *Law which governs the status and capacity of Frenchmen abroad.*—According to Article Three, third paragraph, which expressly relates to this subject alone, their status and capacity are governed by the French law. It matters little, for the application of that rule, that the Frenchman has merely a residence abroad, which would seem to be the only case to which Article Three applies, or that he has established his domicile there. For often the words "domicile" and "residence" are not used in legislative texts in their technical sense. * * * Thus laws of this category follow the person, as was said by our ancestors, as the shadow follows the body. Inhe-

rent in the Frenchman's nationality, they govern him as long as he preserves that nationality, and he cannot free himself from them, except by divesting himself of it. * * *

Par. 203. *Law which governs the status and capacity of foreigners in France.*—The status and capacity of foreigners, whether resident or domiciled in France, are governed by their national law. This rule is not laid down in Article Three, but it follows, in the first place, from the same considerations which require the constant application to Frenchmen of their own law; hence the silence of the Code in this regard, although it expressly declares that the police laws and the laws relative to real property are applicable to foreigners. * * * Furthermore, if France wishes to have the personal statute of her nationals respected abroad, she must, in fair and just reciprocity, respect in turn the personal statute of foreigners (citations). * * *

Par. 208. Are there any exceptions to the rule just laid down, as regards the foreigner? There is certainly one—the foreigner can never demand in France the application of those of his national laws which are contrary to our principles of international public order. * * * There is another exception which is recognized by a great many writers, but which we cannot accept. * * * According to some the foreigner is not to be governed by his national law when its application, in his relations with Frenchmen, would be prejudicial to the latter. * * * Other writers would not reject the foreign law except in those cases in which the Frenchman who has had dealings with the foreigner, and who would suffer by the recognition of his incapacity, has been led into an excusable error with regard to the foreigner's capacity, and has been guilty of no recklessness on his own part.

Baudry-Lacantiniere, *Droit Civile*, Volume One (Edition of 1907), pp. 165 *et seq.*

As Article 9 of the Codes of Spain and of the Philippine Islands is copied from Article 3 of the French Civil Code

the French decisions and the opinions of French law writers of authority are entitled to great weight in the construction of the statute under consideration.

Section 9 of the Civil Code now in force in Porto Rico is a reenactment of Section 9 of the Spanish Civil Code. It reads as follows:

The laws relating to family rights and obligations or to the status, condition and legal capacity of persons shall be binding upon the citizens of Porto Rico although they reside in a foreign country.

Art. 9, Revised Civil Code of Porto Rico, of March 1, 1902.

Revised Statutes and Codes of Porto Rico, p. 597.

In the case of *Antongorgi v. The Register of Property* (6 Porto Rico Reps. 489), involving the interpretation of Art. 9 of the Civil Code of Porto Rico, it appears that one Cuevas, a citizen of the State of New York, but residing in Porto Rico, executed a deed of sale to Antongorgi of a parcel of land in Porto Rico which was acquired by the vendor while married to a former wife. The Registrar refused to record the deed—such officers being vested with quasi-judicial authority under the Spanish Mortgage Law in force in Porto Rico—upon the ground that under the law of Porto Rico real property so acquired became community property of the first marriage of the vendor, and that he could not dispose of it without the acquiescence of the representatives of the estate of his deceased wife. The contention that the law of New York should be followed, under which there is no such institution as the conjugal partnership of the Spanish law, was rejected by the Registrar. Upon appeal to the Supreme Court of Porto Rico this ruling was reversed. The Court, after finding that the evidence that Cuevas was a citizen of New York was sufficient, held that his capacity to execute

the deed must be determined by the law of New York, saying:

This is all in consonance with the principles of Private International Law, according to which the personal law of the individual is that of the country to which he belongs, which follows him wherever he goes, and regulates his personal rights, his capacity to convey property *inter vivos* and *mortis causa*, and the government of his marriage and family. This principle is admitted by the decisions of the Courts, and especially sanctioned by Article 9 of the Civil Code in force, providing that "The laws relating to family rights and obligations or to the status, condition, and legal capacity of persons shall be binding upon citizens of Porto Rico although they reside in a foreign country;" which principle, by a parity of reasoning, is applicable to the citizens of any state residing temporarily or permanently in this Island.

It is probably true that in those States of the Union in which the common law is in force, this principle of the extra-territorial application of foreign laws governing domestic relations, capacity and status would not be recognized, but in the Philippine Islands, whose statutory laws establish the same doctrine, it would be incongruous and inconsistent were it to be disputed. The Civil Code now in force in the Philippine contains identically the same provisions, under the same numbers, as that embodied in Articles 9 and 14 of the Civil Code in force in Spain in 1903. In Spain the Courts have adopted the theory that capacity is to be determined by the *national* law of the foreigner, not by the law of his domicile or that of the place where the contract or act takes place. The statutory law of Spain—and of the Philippines and Porto Rico—has adopted the same theory, and in cases arising in that territory, therefore, the Courts are not at liberty to choose between the conflicting opinions of writers on Private International Law as to the respective merits of the theories advanced by

them. We may well believe, with the majority of the English and American writers, that the theory of the statutes is one which has outlived the conditions which gave it birth, and would be intolerable were the attempt made to apply it in continental United States, but in the Philippines the legislature has solved the problem by taking it out of the domain of forensic discussion. This is apparent, not only from Articles 9 and 14 of the Philippine Code, but still more strikingly from Article 10, which declares that

Personal property is subject to the law of the *nation* of the owner; real property to the laws of the country in which it is situated. Nevertheless legal and testamentary successions, both with respect to the order of succession and the extent of rights of succession, and the intrinsic validity of testamentary dispositions shall be governed by the *national* law of the person whose succession is being dealt with, whatever may be the character of the property or the country where it is situated.

Articles 9, 10 and 14 of the Civil Codes of Spain and of the Philippines constitute a statutory recognition in both those countries of that particular doctrine of Private International Law, recognized in many parts of continental Europe and in other Civil Law countries, under which the *national* law of the foreigner is given extraterritorial effect in matters affecting his status, capacity and domestic relations. Spain—and following her, the Philippines and Porto Rico—have carried this doctrine to its extreme consequences, in Article 10 of their Codes, above cited. Both in Spain and in the Philippines the right of testamentary disposition is limited by the system of *legitimes*, under which certain heirs, designed heirs by force of law (*herederos forzosos*), are entitled to a certain proportion of the estate of their ascendants, of which they

cannot be deprived by will, save when the statutory grounds for disinheritance are found to exist.

Civil Code, Arts. 806 *et seq.*

Nevertheless, the foreigner in Spain or in the Philippines is permitted to dispose of his property by will, whether it be realty or personalty, in accordance with his *national law*, regardless of the length of time he may have been *domiciled* in the country of his residence. Of course, in England and in the United States (*Wilkins v. Ellett*, 108 U. S. 356) the rule is that the descent and distribution of personalty is governed by the law of the last *domicile* of the deceased owner, while the descent of realty is governed by the *lex situs* (*Kerr v. Moon*, 9 Wheaton 565) in marked distinction to the Spanish and Philippine doctrine.

The late Charles A. Willard, for many years a distinguished member of the Supreme Court of the Philippine Islands, in his work entitled, *Notes to the Spanish Civil Code*, available in the Library of Congress, expresses the opinion that Article Nine of the Civil Code continued in force in the Philippines after the change of sovereignty—the word “Spaniards” to be deemed substituted by the word “Filipinos”—and that it has not been affected by the enactment of the Code of Civil Procedure.

Willard, *op. cit.*, p. 6.

The fundamental principle of Private International Law is that the foreign law will be enforced unless it conflicts with some important policy of the law of the forum. In this case there is no conflict whatever between the personal statute of Spanish subjects in the Philippine and the law of the forum—on the contrary, they are identical.

There can, we submit, be no doubt that had the question arisen in Spain, the Spanish courts would have upheld the validity of the emancipation of these Spanish minors

by their Spanish mother, regardless of what the law might be on the subject of emancipation in the country where the act took place. That being so the Philippine courts, administering a law identical in policy with that of Spain, must also recognize the validity of that act when performed in the Philippines. The only limitation upon the contractual capacity of an emancipated Spanish minor is that which requires him to obtain the consent of the emancipating parent if he desires to borrow money or sell or encumber real estate (Civil Code, Art. 217). By public instrument executed by Doña Isabel Palet in Madrid, December 13, 1905 (Exhibit C, Rec. p. 29, Case 25,411) she expressly granted her consent by the execution to her sons of the particular mortgage here in question. The mortgage shows (Exhibit A, Rec. p. 4, Case 25,411) it was executed by these appellants in pursuance of the authority granted them by their mother.

POINT FOUR.

FOREIGNERS CAPABLE OF CONTRACTING BY THE TERMS OF THEIR NATIONAL LAW ARE BOUND BY THEIR CONTRACTS MADE IN THE PHILIPPINE ISLANDS.

(a) *The Personal Statute Determines the Capacity to Act.*

In the Philippine Islands this principle is recognized by positive law. Sec. 9 of the Civil Code now in force in the Philippine Islands declares that

* * * laws relative to the * * * legal capacity of persons are binding upon Spaniards although they reside in a foreign country.

Mr. Justice Willard, in his work on the Spanish Civil Code (*op. cit.*, p. 9), says that since the change of sovereignty the words "Spaniards" and "Spanish" wherever they appear in the Civil Code or the Code of Commerce are to be deemed the equivalent of the word "Filipino" and the Court has so construed them. The Philippine legislature, therefore, having attempted to give its own rules of law regarding the legal capacity of Philippine citizens extraterritorial effect, its courts would presume, in absence of proof to the contrary, that the foreign law on the subject is the same as the law of the forum—that is, in the absence of allegation and proof that the foreign law is otherwise, the law of the forum is applied. But in this particular case the proof (testimony of Dr. Del Pan, Rec. p. 162, Case 25,412) shows without contradiction that the law of Spain in this particular is the same as the law of the Philippine Islands.

In Mr. [redacted]'s work on Private International Law (to be found in the Law Library of the Supreme Court), after carefully explaining the difference between juridical capac-

ity and the capacity to act, the author makes the following statement:

Rules of law which are concerned with the capacity to act have quite a different purpose. It is not their object to withdraw the possession and enjoyment of certain rights from those who are incapacitated. It is their care that such persons shall not involve themselves in loss by their own acts. This care for the person must be a permanent one if it is to have effect; it extends therefore to all persons who permanently belong to the state—*i. e.*, who are domiciled there. It is no doubt conceivable that a system of law should recognize consistently as minors all foreigners who had not attained the particular age fixed by that law as to age of majority, but this could only be carried out if at the same time there were established a guardianship for foreigners who are resident in the country only temporarily. It is, however, plain that this requirement could not be carried out, and, as a matter of fact, no one has ever thought of developing the idea. It necessarily follows that without the necessity of proof of the existence of any customary law, according to the reasonable sense of the statutes on the subject, that one who is capable of acting by the law of his own country must be treated by the courts of all countries as capable.

Bar, Private International Law, p. 305.

The converse of this proposition, namely, that anyone who by the laws of his own domicile is incapable of acting is to be recognized as incapable everywhere cannot on the other hand be shown to follow as a necessary logical inference. On the contrary, the inference from the purpose of those laws as to incapacity to act, as already pointed out, is that foreigners, if they have the capacity to act by the laws of the country where the transaction which may be in question takes place, must be held to have that capacity by the courts of all countries except those of their native country and those of any other where similar law to that recognized in their own country is in force. It may be

laid down that the legislature will never be inclined to show greater protective care for foreigners than its own subjects, for it proclaims that the latter, on attaining a certain age, no longer stand in need of the care which it exercises over minors but are quite fit to protect their own interests, it would thereby seem to lay down a similar rule for foreigners.

Bar, Private International Law, p. 306.

The author then proceeds to demonstrate that although it does not follow as a logical necessity, because a person is incapable of contracting in accordance with the laws of his own country because of his minority, that he should nevertheless be considered as incapable in all other countries, the countries of Continental Europe, whose legislation is based upon the French civil code, have nevertheless adopted the rule, applicable to such cases, that a person who is incapable in accordance with his personal statute must be regarded as being incapable everywhere, even in countries in which the law applicable to citizens would regard them as being capable under similar circumstances. The author then shows that in view of the serious inconvenience which results from the application of this rule, and especially the damage which under it is often suffered by the nationals of the countries in which this principle has been adopted, it is gradually being abandoned, in some cases by express legislation, and in others by the modification of the doctrine by the courts.

Summing up, after considering the laws of several nations under this subject, he declares that the true rule is that a person who is capable of contracting and obligating himself in accordance with his personal statute can voluntarily bind himself everywhere.

As an explanation of the reason upon which this rule is based the author states that the determination of the age at which the law creates the presumption of the possession

of the necessary mental development for the control by the person of his own affairs is a matter of public policy in each country, as it is unquestionable that the age at which as a general rule the maturity of mind which marks the adult is acquired varies in different nations, and it is to be presumed that each nation can determine better than any other the age which should be fixed as that at which its own citizens are to acquire the status of majors. Unquestionably no foreign nation has any interest in prolonging, with respect to the subjects or citizens of other nations, the time during which the incapacity of minority should continue. Consequently there is nothing inconsistent in the proposition that a foreigner in Spain—for example a British subject—should be bound by a contract entered into by him at the age of 22 years, notwithstanding the fact that Spaniards under their own law do not acquire majority until they have attained the age of 23.

The same reasons which are invoked as being sufficient to justify the recognition of capacity everywhere in favor of a person who has acquired the legal status of a major under the law of his own country with respect to this matter are equally sufficient to justify the recognition of the capacity which under exceptional circumstances is acquired by minors who are emancipated in accordance with the laws of their own country. Bar, in his work on private international law, paragraph 149, speaking of emancipation, says:

SEC. 149. *Minority Venia Aetatis.* We have already shown why this incapacity to act must, according to the laws of the continent of Europe, be as a rule determined by the personal statute of the party concerned. Logic requires that the personal statute of a minor shall also determine whether and if so what particular acts of disposition *inter vivos* may as an exception be undertaken by minors. It is therefore unnecessary to do more than to notice some specialities with regard to which doubt may arise.

By systems of territorial law it is in the power of the sovereign or of a judicial officer, or the father, etc. (see Civil Code 476, emancipation) to confer the right of majority either in full or in part. This grant of majority is made in virtue of the laws of that country, although it requires a special act of the authorities of the State and it has therefore the force of law; such a case is to be regarded, therefore, in the same light as if the *lex domicilii* appointed an earlier age as the initial age of majority for all its subjects.

Bar, Private International Law, par. 149.

Almost a century ago the Supreme Court of the State of Louisiana, in a case entitled *Saul v. His Creditors*, 16 Am. Dec. 224, 5 Mart. N. S. L. A. 569, laid down the same rule as that which Bar advocates. In its decision in that case the Supreme Court of Louisiana ruled as follows:

These principles may be in part illustrated by one or two examples that we presume will receive general assent. The writers on this subject, with scarcely any exception, agree that the laws or statutes which regulate minority and majority, and those which fix the state and condition of man are personal statutes, and follow and govern him in every country. Now, supposing the case of our law fixing the age of majority at twenty-five, and the country in which a man was born and lived previous to his coming here placing it at twenty-one, no objection could be perhaps made to the rule just stated, and it may be, and we believe would be true, that a contract made here at any time between the two periods already mentioned would bind him.

But reverse the facts of this case, and suppose, as is the truth, that our law placed the age of majority as twenty-one; that twenty-five was the period which a man ceased to be a minor in the country where he resided; and that at the age of twenty-four he came into this State, and entered into contracts, would it be permitted that he should in our courts, and to

the demand of one of our citizens, plead as a protection against his engagements the laws of a foreign country, of which the people of Louisiana had no knowledge; and would we tell them that ignorance of foreign laws, in relation to a contract made here, was to prevent them enforcing it, though the agreement was binding by those of our own State? Most assuredly we would not. *Baldwin v. Gray*, 4 Mart. N. S. 192 (*ante*. 169).

(b) *In the Philippine Islands and in Spain the personal statute is the national law of the foreigner.*

Fortunately we have no occasion to discuss the question which has given rise to so much diversity of opinion among writers on the subject of private international law, namely: whether by the personal statute is to be understood the law of the nation of the subject or the law of the country in which he is domiciled. Article 9 of our Civil Code expressly provides that the laws relative to family rights and obligations, and to the status, condition and legal capacity of persons, are binding upon Spaniards (read Filipinos), even though they reside in foreign countries. Article 15 of the Code of Commerce provides that foreigners "who engage in business in Spain (read Philippine Islands) are subject to the laws of their own country with respect to their capacity to contract." It is evident, therefore, that the Philippine legislature has adopted the national law instead of the domiciliary law as that which is to determine the personal statute.

It is true that Article 9 of the Civil Code, although it provides that laws relating to status and capacity are binding upon Spaniards (read Filipinos), although residing in foreign countries, does not declare in so many words that the courts here should reciprocally apply the national law of foreigners for the purpose of determining their status and capacity. Nevertheless, in addition to Article

15 of the Code of Commerce above cited, we can cite decisions of the Supreme Court of Spain which hold that the same rule should be applied reciprocally to foreigners as that which the legislature desired that foreigners should apply with respect to Spaniards.

In its judgment of May 29, 1894, the Supreme Court of Spain declares that

Foreigners are accompanied by their status and capacity, and the laws of their own country should be applied to them for the purpose of avoiding the inconvenient results which would follow unless they were governed by a single law.

Scaevola, Jur. Cod. Civ., Vol. 1, p. 59.

The same doctrine is laid down in a resolution passed by the General Direction of Registers of Property, dated December 7, 1894, in which it was said:

Such is the rule recognized by our Civil Code, which provides in its ninth article that the laws relative to the legal capacity of persons, and therefore to the method by which deficiencies in capacity are to be supplied when lacking, are binding upon Spaniards; this same rule of law is logically applicable when we come to judge of the capacity of a foreigner in Spain, inasmuch as the extraterritorial force of our own laws requires, by virtue of the principle of reciprocity, equal force to be given to the laws of other countries.

Scaevola, Jur. Cod. Civ., Vol. 1, p. 60.

This doctrine of the reciprocal application of the principle established by Article 9 of the Civil Code has been recognized by the courts of Porto Rico and of Cuba since the end of the Spanish regime in those Islands.

Article 9 of the Civil Code of Porto Rico, adopted in the year 1902, is exactly the same as the corresponding article of our code, with the exception that instead of the word "Españoses" it contains the word "Puerto Riquenos."

In the case of *Antongorgo v. The Register of Property*, 6 P. Rico Rep., p. 496 (*ante*, p. 73), it was said that in accordance with the principles of private international law

the personal law of each individual is that of the country of which he is a subject, and which follows him wherever he goes, regulating his personal rights, his capacity to transmit property by acts *inter vivos* and *mortis causa*, and his matrimonial and family regime; this is a principle established by the decisions of courts, particularly sanctioned by article 9 of the Civil Code now in force, in the provision that "the laws relating to family rights and obligations, or to the status, condition, and legal capacity of persons, shall be binding upon citizens of Porto Rico, though they reside in a foreign country," which precept, by a parity of reasoning, should be applicable to the citizens of any State who may be residents habitually or temporarily of this country.

This same principle of reciprocity has been expressly recognized by the Supreme Court of the Republic of Cuba in a case decided not long ago by the Cuban Supreme Court. In *Martinez v. Martinez* (Cuban Sup. Ct. Rep., Vol. 8, 490), it was held that

Two fundamental principles of private international law which from remote antiquity have obtained the respect and sanction of cultured nations, and which control for the common benefit the so-called extraterritoriality of all law are expressly recognized in our statutes, and in accordance therewith a citizen who is juridically capable in his own country for the performance of any particular act, or to enter into any particular contract, carries with him everywhere his capacity of origin, although the use or exercise of the right must be adapted to the foreign law in force in the place in which the right is made use of.

Consequently, it is evident that in the Philippine Islands we must recognize reciprocally the same principle which we seek to establish for our own citizens in accord-

ance with Article 9 of the Civil Code, and that, therefore, we must recognize the capacity of the defendant Doña Isabel Palet under her personal statute to confer upon her children, the defendants Joaquin and Zoilo, the status of majority by means of emancipation, and they having been emancipated by their mother in accordance with the personal statute applicable to them, we must give to all contracts entered into by them in those islands, in the exercise of the capacity acquired by them as the result of that emancipation, the same effects which such contracts would receive under their own national law.

(c) THE REAL STATUTE DOES NOT AFFECT CONTRACTUAL CAPACITY.

It is of course true that the general principle, as recognized by Article 10 of the Civil Code, is that real property is subject to the local law, but this simply means that the law of the country in which such property is located is to be applied, rather than any foreign law, to determine the existence and extent of the rights of ownership of such property. Consequently no foreigner could insist, merely because of his foreign citizenship, that real property owned by him in the Philippine Islands should be free from the legal easements, for instance, to which such property is subject when belonging to citizens of the country.

In the case of *Saul v. His Creditors*, 16 Am. Dec. 224, 5 Mart. N. S. L. A. 569, above referred to, the Court, speaking of real statutes, says:

The rules given by Chancellor D'Aguesseau are perhaps preferable to any other. That, says he, "which truly characterizes a real statute, and essentially distinguishes it from a personal one, is not that it should be relative to certain personal circumstances, or certain personal events; otherwise we should be obliged to say that the statutes which relate to the paternal power, the right of wardship, the tenancy by-

courtesy (*droit de viudite*), the prohibition of married persons to confer advantages on each other, are personal statutes, and yet it is clear, in our jurisprudence, that they are considered as real statutes, the execution of which is regulated not by the place of domicile, but by that where the property is situated."

In all matters relating to the disposal of real property the contractual capacity of the owner is to be determined by his national law or by the law of the place where the contract was made, one or the other being applied according to the requirements of the situation with a view to upholding the validity of the contract. The mere fact that the effect of the assumption of an obligation by a person who though *sui generis* by the laws of his own country would be a minor by the laws of our country would indirectly bring about as a result the divesting of his title to real property in our territory in order that the proceeds may be applied to the satisfaction of the indebtedness created by his contract, would not call for an application of the real statute. No question which calls for such application is involved in that case. If the state permits foreigners to own real property within its territory it is interested in insisting that the incidents of such ownership shall be the same for foreigners as for its own citizens, but it is not interested in placing any restrictions upon the power of disposition by acts *inter vivos* of such property by foreigners.

In Wharton on the Conflict of Laws, paragraphs 84 to 93, inclusive, will be found an interesting review of the European authorities regarding the conflicting theories of the laws of nationality and of domicile, as affecting the test of contractual capacity.

In the decision of the Supreme Court of the Philippine Islands this particular feature of the case, while submitted to the Court, was not directly passed upon, the Court

taking the view, which is clearly correct, that the emancipation of the appellants, Joaquin and Zoilo Ibañez de Aldecoa, was valid in accordance with the laws of the Philippine Islands, which appellants insisted should be applied. Mr. Justice Torres, while concurring in the judgment of the Court as regards the validity of the emancipation under the laws in force in the Philippine Islands, also expressed his belief that the same conclusion would be reached by the application to the appellants of their national law, which he deemed the law properly applicable to the case (Rec. p. 171, Case 25,411).

The remarks contained in the decision of the court, disposing of the motion for a rehearing (Rec. p. 174, Case 25,411), show very clearly that the Philippine Supreme Court was in full accord with the views expressed by Mr. Justice Torres and would have adopted them formally had it been necessary to do so. The opinion of the Court upon the Philippine law, accepting the contention of these appellants as to its applicability, lead to the same conclusion regarding the validity of the mortgage as that which results from the application of the national law of the appellants in determining their capacity.

POINT FIVE.

THE MORTGAGE IN DISPUTE HAS BEEN EXPRESSLY RATIFIED BY THE APPELLANT, JOAQUIN IBAÑEZ DE ALDECOA, AFTER HE ATTAINED HIS TWENTY-THIRD YEAR.

The sixteenth paragraph of the findings of the trial judge, in Case 25,412, reads as follows:

That on the 13th day of June, 1907, at the request of the defendant Aldecoa & Company, and of the defendants Isabel Palet, Joaquin Ibañez de Aldecoa, and Zoilo Ibañez de Aldecoa, and to enable the defendant Aldecoa & Company to obtain an attachment upon the property of one Alejandro S. Macleod in a suit then about to be brought against the said Macleod by Aldecoa & Company for the purpose of recovering of him certain shares of the Pasay Estates Company, Ltd., the plaintiff bank undertook and agreed to provide an attachment bond in the required sum of ₱ 50,000.00 upon the condition and agreement that the proceeds of the suit against the said Macleod, after deducting the cost of the proceeding, should be applied in their entirety to the discharge *pro tanto* of the liability of Aldecoa & Company to the plaintiff corporation; that the instrument of mortgage of February 23, 1906, was incorporated by reference into the said agreement of June 13, 1907. One of the duplicate originals of the said agreement of June 13, 1907, admitted by defendants to be genuine, is in evidence herein as plaintiff's Exhibit V and is hereby incorporated by reference into these findings. This contract (Exhibit V) was signed by the defendant Joaquin Ibañez de Aldecoa y Palet personally, by Mr. William Urquhart as liquidator of Aldecoa & Company, and by Mr. José Maria Ibañez de Aldecoa as attorney in fact of the defendants Isabel Palet and Zoilo Ibañez de Aldecoa y Palet, under the authority

conferred upon him by the letters of attorney in evidence herein as plaintiff's Exhibit C C C.

Rec. p. 380, Case 25,412.

The trial court in the cancellation case held, upon evidence of the facts above set forth, that the mortgage was binding upon the appellant Joaquin, by ratification, but that the act of his agent was not binding upon the appellant Zoilo as a ratification. The Supreme Court said on this subject in its decision in the cancellation case:

The conclusions we have arrived at make it unnecessary to consider the ratification of the mortgage contract by the plaintiff Joaquin Ibañez de Aldecoa, after having arrived at the age of majority. However, we might say that we fully agree with the holding of the trial court upon this point.

Rec. p. 171, Case 25,411.

The agreement of June 13, 1907, is in evidence as Exhibit V, Rec. p. 205, Case 25,412; admitted in evidence as Ex. L., p. 112, Case 25,411.

When the agreement was introduced in evidence at the trial of Case 25,411—the cancellation suit—it was stipulated in open court (Rec. p. 112, Case 25,411) that to the original of the agreement there was attached, as part thereof, a printed copy of the mortgage of February 26, 1906, here in dispute.

The Court will observe that by the second paragraph of the agreement of June 13, 1907 (Exhibit V), the appellant Joaquin Ibañez de Aldecoa expressly undertook and agreed to extend the mortgage now in dispute to cover the additional contingent liability of Aldecoa & Company to the Hong Kong Bank arising from the execution of the attachment bond in the action against Macleod. This, we submit, amounts to an express ratification by him of the mortgage in question.

Whitney v. Dutch, 14 Massachusetts 457.

Joaquin Ibañez de Aldecoa having been born on March 21, 1885, was over the age of twenty-three years at the time of the execution of the document in evidence as Exhibit V, and competent to contract under his national law and the law of the Philippine Islands.

Civil Code Article 320.

Testimony of Dr. Del Pan, Rec. p. 163, Case 25,412.

The trial judge (Rec. p. 152, Case 25,411) held that the mortgage in dispute had been ratified by Joaquin Ibañez de Aldecoa after the attainment of the age of twenty-three years, and was therefore binding upon him. The Supreme Court of the Philippine Islands, being of the opinion that the contract in question was binding upon both the appellants, regardless of its ratification, did not consider this feature of the case at length, only saying

The conclusions we have arrived at make it unnecessary to consider the ratification of the mortgage contract by the plaintiff, Joaquin Ibañez de Aldecoa, after having arrived at the age of majority. Nevertheless we might say that we fully agree with the holding of the trial court upon this point.

Rec. p. 171, Case 25,411.

The Court will note that the contract of June 13, 1907 (Ex. V), was also signed by José M. Ibañez de Aldecoa on behalf of the appellant, Zoilo Ibañez de Aldecoa, and that it has been stipulated of record (Rec. p. 155, Case 25,412) that he was at the time of the execution of that document the

attorney in fact under a general power of attorney of the defendants, Isabel Palet and Zoilo Ibañez de Aldecoa.

The trial judge held that the authority of the attorney in fact did not extend to the ratification of the mortgage, and we are constrained to admit that there is much

strength in that position. It is obvious, however, that, regardless of the effect of the execution of the document in evidence as Exhibit V, the liability of these appellants and the correctness of the judgment of the lower court are firmly established upon other grounds.

POINT SIX.

THE CONSENT OF THE APPELLANTS TO THE EXECUTION OF THE MORTGAGES WAS NOT OBTAINED BY ANY WRONGFUL CONDUCT ON THE PART OF THE BANK.

It was contended in the pleadings on behalf of Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa (amended complaint, paragraph 5, Rec. p. 45, Case 25,411) that they were induced to sign the mortgages in question by deceit practiced on them by the manager of Aldecoa & Company and by the manager of the Hong Kong Bank. These contentions were apparently abandoned on the appeal to the Supreme Court of the Philippine Islands, for no mention is made of any such contention in the decision of the Supreme Court in this case. No specific mention of the point is made in the Assignments of Error (Rec. p. 181, Case 25,411). The only attempt made at the trial to substantiate these charges was by the testimony of the appellant, Joaquin Ibañez de Aldecoa, whose deposition (Rec. p. 32, Case 25,411), was introduced in evidence on behalf of plaintiffs at the trial (Rec. p. 53). A careful perusal of that deposition will show that it wholly fails to substantiate the averments of deceit. It simply shows that Mr. Jones, at that time the Agent of the Bank in Manila, plainly informed the appellants, when they came to his office to see him on the subject, that unless the required additional security was given the Bank would proceed immediately to enforce by action its matured demand against Aldecoa & Company.

POINT SEVEN.

THE MORTGAGE WAS SUPPORTED BY A VALID CONSIDERATION.

After the decision was rendered in Case 25,411—the cancellation suit—a motion was made for a rehearing upon the ground, among others, that the mortgage contract was void as to Joaquin and Zoilo Ibañez de Aldecoa by reason of a lack of consideration (Rec. Case 25,411, p. 175). In passing upon this point the Supreme Court said:

It is asserted that they executed the mortgage under the impression that they were partners in the firm of Aldecoa & Company, when, as decided by a final judgment of the Court of First Instance, they were not such partners. * * * By the same judgment which released the plaintiffs from their obligations as partners of the firm they were declared creditors of that firm. Here was a valid and subsisting consideration for the mortgage; the creditors desire to preserve the firm intact in the hope of recovering from it in due course their total credits. It seems clear that it was the object of the mother and the plaintiff's children to thus save the business, and it matters little that the plaintiffs were creditors and not partners.

Decision Case 25,411, Rec. p. 175.

This ruling has been assigned as error (Eighth Assignment, Rec. p. 182, Case 25,411) but it is respectfully submitted that the ruling of the lower court is correct, on the grounds stated and others equally sound.

(a) THE COMMON LAW DOCTRINES AS TO CONSIDERATION DIFFER GREATLY FROM THE CAUSE OF THE CIVIL LAW.

While it is true, as we shall have occasion to show, that had this case originated in a country in which the common

law is in force, the consideration supporting it would have been ample, it is proper to draw the attention of the Court to the fact that the strict technicalities of the English law find no place in the Civil Law.

The difference between the "*cause*" of the Civil Law, and the "consideration" of the English Common Law is pointed out by Judge Howe in his little work entitled, "Studies in the Civil Law," in which he quotes the case of *Mouton v. Noble*, 1 La. 182, in which the Court said, in a case in which it was contended that an agreement to allow a debtor to pay his debt in installments was void as being without consideration:

To set at naught an engagement of this kind would certainly be a breach of faith; and a rule which puts it thus in the power of a party to trifle with his engagement * * * we cannot recognize as forming part of our jurisprudence. * * * The requirement of a small pecuniary consideration to support an agreement is a mere fiction which the Civil Law has never adopted.

Howe, Studies in the Civil Law, p. 115.

The term *causa* as it is employed in the Spanish Civil Code in force in the Philippines is defined as being, in onerous contracts,

for each contracting party the undertaking or promise of a thing or service by the other party.

Civil Code, Art. 1274.

The full Spanish text is as follows:

ART. 1274. En los contratos onerosos se entiende por *causa*, para cada parte contratante, la prestacion ó promesa de una cosa ó servicio por la otra parte; en los remuneratorios el servicio ó beneficio que se remunera, y en los de pura beneficencia la mera liberalidad del brinhechor.

The English translation is,

ART. 1274. In onerous contracts by consideration (*causa*) is understood, for each contracting party, the undertaking or promise of a thing or service, by the other party; in remuneratory contracts the service or benefit which is remunerated; and in those of pure beneficence the mere liberality of the benefactor.

As Manresa points out in his commentary on this article, in remuneratory contracts the service remunerated may be wholly past. A promise to pay for services rendered without hope or expectation of reward would be enforceable under the Spanish law, although void as resting on a past consideration at common law.

It is likewise evident from the text of the article that a promise to make a gift may give rise to an enforceable contract, supported by the "mere liberality" of the benefactor as its *causa*. The contractual nature of a promised donation is also clearly shown by Arts. 629 *et seq.* of the Civil Code.

As the contract in question is clearly neither "remuneratory" nor of "pure beneficence" it falls within the class which Art. 1274 of the Civil Code designates as "onerous." The promise of these appellants to pay the debt of Aldecoa & Company, under certain conditions, constitutes the *causa* which supported and made enforceable the Bank's promise to forego the immediate enforcement of its demand against Aldecoa & Company, and to allow the debt of that firm to be discharged in installments. Conversely this promise of forbearance by the Bank constitutes the *causa* of the undertaking of the appellants.

But the appellants contend that if they had known that the courts would hold that they were not partners in the firm of Aldecoa & Company, and not liable as such for its debts they would not have assumed the obligation expressed in the mortgage they now seek to repudiate.

This contention rests upon a failure to discriminate between the *motives* which led the appellants to assume the obligation and the *consideration* (*causa*) which makes their promise legally binding. This distinction is recognized and clearly pointed out in Baudry-Lacantiniere's work on the French Civil Law (in the Library of Congress) in which the writer says (Vol. 12, p. 348), dealing with the subject of consideration (*cause*) in the French law:

We have said that the consideration (*cause*) of the obligation must not be confused with its *motive*. The distinction between the *cause* and the *motive* is delicate, as there is a very close connection and consequently a great similarity between the two things. Each of them is an incentive; but the incentives to human action present a great diversity and the difficulty is to determine which among them all is that which constitutes the *cause* (consideration) and which are those which constitute the motives.

The writer then gives as an illustration the case of a man who, having need of grain with which to seed a field, promises to pay a certain sum of money for seed which another promises to deliver him. The consideration (*cause*) supporting the promise to pay the money is the promise of the vendor to deliver the seed; its motive is the desire to have the means to plant the field.

Manresa, the eminent Spanish law writer, makes the same observation in his commentary on Article 1274 of the Spanish Civil Code. He says that the *causa* (consideration) is to be distinguished from the motives in that the former is

the essential reason for the contract, while the latter are the private reasons of one of the contracting parties which in no wise affect the other, and which are not incompatible with some other different true consideration (*causa*). * * * When a thing is purchased it is in itself the consideration (*causa*) for the buyer,

and not the motives which may have influenced him, such as the utility of the thing, its perfection, its relation to some other thing, the use to which he may intend to put it, etc.; a most important distinction, which will prevent the annulment of a contract solely because of its motives, unless the contract has been made subject to the accomplishment of the latter as conditions to the enforceability of the undertaking.

Manresa, Commentaries on the Spanish Civil Code, Vol. 8, p. 642. * * *

It may be added, furthermore, that the motive which induces the formation of the contract is in most instances unknown to the other party. In this particular case the appellants now may say that the motive which induced them to enter into the agreement was the belief that they were liable as partners for the debt. It is equally possible that the motive may have been the desire of the appellants to obtain the benefit of an extension for their mother, who is unquestionably liable, and who has enjoyed the benefit of the delay accorded by the Bank or, as suggested by the lower court, their desire, as creditors, to hold the business together. All of these motives may have existed at the same time, or the incentive to the action may have been something quite different, known only to the appellants. We contend that this is an inquiry with which the law will not concern itself. The *cause* of the obligation assumed by the Bank, and which it has fully performed, was the *promise* or *undertaking* of the appellants, and in no degree the motives which impelled them to assume it.

(b) A BENEFIT TO A THIRD PERSON IS SUFFICIENT TO SUPPORT A PROMISE.

But even under the stricter doctrines of the common law which require the consideration to be valuable, this contract would be upheld. It admits of no dispute that

Isabel Palet and Aldecoa & Company as an entity were indebted to the Bank in a large sum and that in consideration of the execution of the disputed mortgage the Bank agreed to forego the immediate enforcement of the right to demand payment, and converted its matured obligation into one payable by installments. Aldecoa & Company and Isabel Palet have fully enjoyed this forbearance on the part of the Bank. It is in itself sufficient to support such a promise as that given by appellants if made by persons having no connection with either the creditor or the debtor. If made by a stranger the motive of the undertaking might be pure generosity, but the obligation would be none the less binding. Were it not so, in nearly every case of suretyship the surety could plead undisclosed motives as a ground for avoiding the contract.

No citation of authorities is necessary to support the proposition that a detriment to the promisor is sufficient, without any corresponding benefit to the promisee, and that an agreement to forbear for a definite time to enforce a valid demand is such a detriment.

(c) ALDECOA & COMPANY RECEIVED A SUBSTANTIAL CASH ADVANCE IN CONSIDERATION OF THE EXECUTION OF THE DISPUTED MORTGAGES.

Paragraph Four of the disputed contract (Exhibit A, Rec. p. 10, Case 25,412; Rec. p. 6, Case 25,411) reads as follows:

That the Hong Kong & Shanghai Banking Corporation shall keep open in favor of the general mercantile partnership Aldecoa & Company, a credit in current account up to the sum of Four Hundred and Seventy-Five Thousand Pesos (P475,000), Philippine currency, *part of which has already been used.*

On December 31, 1906, when Aldecoa & Company went into liquidation, the total amount of the indebtedness of the firm to the Bank under this contract was, with interest,

₱516,517.98 (Finding, Supreme Court, P. I., Rec. p. 404, Case 25,412) and, without interest, somewhat in excess of ₱475,000.00 (Testimony, Silva, Rec. p. 175, Case 25,412). The evidence shows conclusively that the additional advances were made solely upon the security of the mortgages given by Mrs. Isabel Palet and her sons Joaquin and Zoilo. (Exhibits D7, D8 and D9, Rec. pp. 89 *et seq.*, Case 25,411.)

It is respectfully submitted that from every point of view the consideration upon which the liability of these appellants rests is ample.

POINT EIGHT.

THE PLEA OF ANOTHER SUIT PENDING WAS PROPERLY REJECTED.

The suit brought by Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa for the cancellation of their mortgage to the Bank was pending on appeal in the Philippine Supreme Court when the Bank brought its suit for the enforcement of the obligation secured by the mortgage against Aldecoa & Company in liquidation, Doña Isabel Palet, and her sons, Joaquin and Zoilo.

In their answer to the amended complaint (Rec. p. 148) the appellants, Joaquin and Zoilo Ibañez de Aldecoa, set up the pendency of the cancellation suit as a plea in abatement of the present action. This plea was overruled by the trial court, and the ruling assigned as error on the appeal. In disposing of the point adversely to appellants the lower court (Rec. p. 411, Case 25,412) said:

The basis of the first alleged error is the pendency of an action instituted by the appellants Joaquin and Zoilo in 1908 to have the mortgages which the Bank seeks to foreclose in the present action annulled in so far as their liability thereon is concerned. That action was pending in this Supreme Court on appeal,

when the present action was instituted (1911), tried, and decided in the court below.

The principle upon which a plea of another action pending is sustained is that the latter action is deemed unnecessary and vexatious. (*Williams v. Gaston*, 148 Ala. 214; 42 Sou. 552; 1 Cyc. 21; 1 R. C. L. Sec. 1). A statement of the rule to which the facts of the plea must conform in order to entitle the litigant to its benefits, and which has often met with approval, is found in *Watson v. Jones* (13 Wall. 579; 20 L. Ed. 666).

But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties or at least such as represent the same interest, there must be the same rights asserted and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had already been disposed of it could be pleaded in bar as a former adjudication or the same matter between the same parties.

It will be noted that the cases must be identical in a number of ways. It will be conceded that in so far as the plea is concerned, the parties are the same in the case at bar as they were in the action to have the mortgages annulled. Their position is simply reversed, the defendants there being the plaintiffs here, and *vice versa*. This fact does not arrest the application of the rule. The inquiry must therefore proceed to the other requisites demanded by the rule. Are the same rights asserted? Is the same relief prayed for? The test of identity is thus stated in 1 Cyc. 28:

"A plea of the pendency of a prior suit is not available unless the prior action is of such a character that, had a judgment been rendered therein on the merits, such a judgment would have been conclusive between the parties and could be pleaded in bar to the second action."

This test has been approved, citing the quotation, in *Williams v. Gaston* (148 Ala. 214; 42 Sou. 552);

Van Vleck *v.* Anderson (136 Iowa 336; 113 N. W. 853); Wetzstein *v.* Mining Co. 28 Mon. 451; 72 Pac. 865). It seems to us that unless the pending action, which the appellants refer to, can be shown to approach the action at bar to this extent, the plea ought to fail.

The former suit is one to annul the mortgages. The present suit is one for the foreclosure of the mortgages. It may be conceded that if the final judgment in the former action is that the mortgages be annulled, such an adjudication will deny the right of the Bank to foreclose the mortgages. But will a decree holding them valid prevent the Bank from foreclosing them? Most certainly not. In such an event the judgment would not be a bar to the prosecution of the present action. The rule is not predicated upon any such contingency. It is applicable, between the same parties, only when the judgment to be rendered in the action first instituted will be such that, regardless of which party is successful, it will amount to *res judicata* against the second action. It has often been held that a pending action upon an insurance policy to recover its value is not a bar to the commencement of an action to have the policy reformed. The effect is quite different after final judgment has been rendered in an action upon the policy. The cases are collected in the note to National Fire Insurance Company *v.* Hughes (12 L. R. A. (n. s.) 907). So it was held in the famous case of Sharon *v.* Hill (26 Fed. 337) that the action brought by Miss Hill for the purpose of establishing the genuineness of a writing purporting to be a declaration of marriage and thereby establishing the relation of husband and wife between the parties could not be pleaded in abatement of Senator Sharon's action seeking to have the writing declared false and forged. The Court said:

"This suit and the action of Sharon *v.* Sharon are not brought on the same claim or demand. The subject matter and the relief sought are not identical. This suit is brought to cancel and annul an alleged false and forged writing, and enjoin the use of it by

the defendant to the prejudice and injury of the plaintiff, while the other is brought to establish the validity of said writing as a declaration of marriage, as well as the marriage itself, and also to procure a dissolution thereof, and for a division of the common property and for alimony."

Incidentally it was held in this case that a judgment of the trial court declaring the writing genuine was not *res judicata* after an appeal had been taken from the judgment of the Supreme Court. So, in the case at bar, the fact that the trial court in the former action holds the mortgages invalid as to one of the herein appellants is not final by reason of the appeal of the Bank from that judgment.

Cases are also numerous in which an action for a separation has been held not to be a bar to an action for divorce or *vice versa*. (Cook v. Cook, 4 L. R. A. (n. s.) 83, and cases collected in the note.) In Cook v. Cook it was held that a pending action for an absolute divorce was not a bar to the commencement of an action for separation. The above authorities are so analogous in principle to the case at bar that we deem the conclusion irresistible that the pending action to annul the liability of the two appellant children on the mortgages cannot operate as a plea in abatement in the case in hand, which seeks to foreclose these mortgages. The subject matter and the relief asked for are entirely different. The facts do not conform to the rule and it is therefore not applicable.

It is submitted that this reasoning is sound and that the conclusion is supported by authority.

Had the mortgage matured at the time the suit for cancellation was brought the matter might have been tried in one proceeding by making Mrs. Isabel Palet and Aldecoa & Company parties, and filing a cross-complaint against the plaintiffs. But unfortunately the five years fixed as the period which must elapse before suit could be brought on the mortgages had not then expired, and

the Bank was compelled to wait until the mortgage matured before bringing its action.

This case affords a striking example of the evils which would result were such a plea as this tenable. It would always be open to a mortgagor desirous of postponing the day of reckoning to bring a suit for the cancellation of the mortgage a few months before the due day of the obligation, and by successive appeals keep the action pending as a bar to a foreclosure suit for several years. The cancellation suit now under consideration was instituted by Joaquin and Zoilo Ibañez de Aldecoa in January, 1908. They have already succeeded in keeping it in court for nine years, and it will certainly be over ten years before it is finally disposed of. Yet, according to the theory of opposing counsel, we should be compelled to wait that full term of ten years before taking steps to foreclose the mortgage. If we had acquiesced in this theory we should have had to wait until 1918 to file the suit, and if defendants were to follow the same tactics of obstruction might hope for a judgment in 1928. As it is, although the suit was started in March, 1911, they have kept us in court over six years, with the prospect of another year, at least, to be added to it.

Certainly the doctrine invoked was never intended to supply the means by which a debtor might at will evade the payment of a debt—yet this very result would follow if appellant's theory were accepted. The pendency of a suit for the cancellation of an instrument certainly would not stop the running of the statute upon the obligation evidenced by it, and were the obligee to wait for the termination of the cancellation suit before beginning his action he might find it barred. Under the Philippine Code nothing but the institution of an action, partial payment, or a written acknowledgment or promise to pay (Sec. 50, Act 190) will stop the running of the statute.

This is another reason why, as pointed out in the opinion of the court below (*supra*, p. 101) it is only such pending suits as are bound to be *res judicata* of the issues presented by the new suit, *regardless of the success or failure of the plaintiff*, which may be pleaded in abatement. In such cases the plaintiff in the second suit is refused a hearing because he has, or has had, an opportunity in the pending suit to be heard upon every matter which he seeks to litigate in the new action. Unless such an opportunity has been afforded him, the plea will not lie.

But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or, at least, such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. * * * The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties.

Watson v. Jones, 13 Wallace 679.

This case was cited and followed in

United States v. "The Haytian Republic," 154 U. S. 116.

The conclusion of the lower court as regards the validity of the mortgage in question with respect to Joaquin and Zoilo Ibañez de Aldecoa is correct, and may be affirmed upon either of the grounds considered, namely:

1. That the emancipation and the contract are binding under the national law of the appellants;
2. That the rules of the Civil Code relating to emancipation have not been affected by the enactment of the Philippine Code of Civil Procedure; or
3. That even if the power of emancipation has been taken away prospectively by the enactment of the Code

of Civil Procedure it did not affect existing relations of parent and child.

With regard to the appellant, Joaquin Ibañez de Aldecoa, it may also be affirmed upon the ground that the mortgage was expressly ratified by him after attaining the age of twenty-three years.

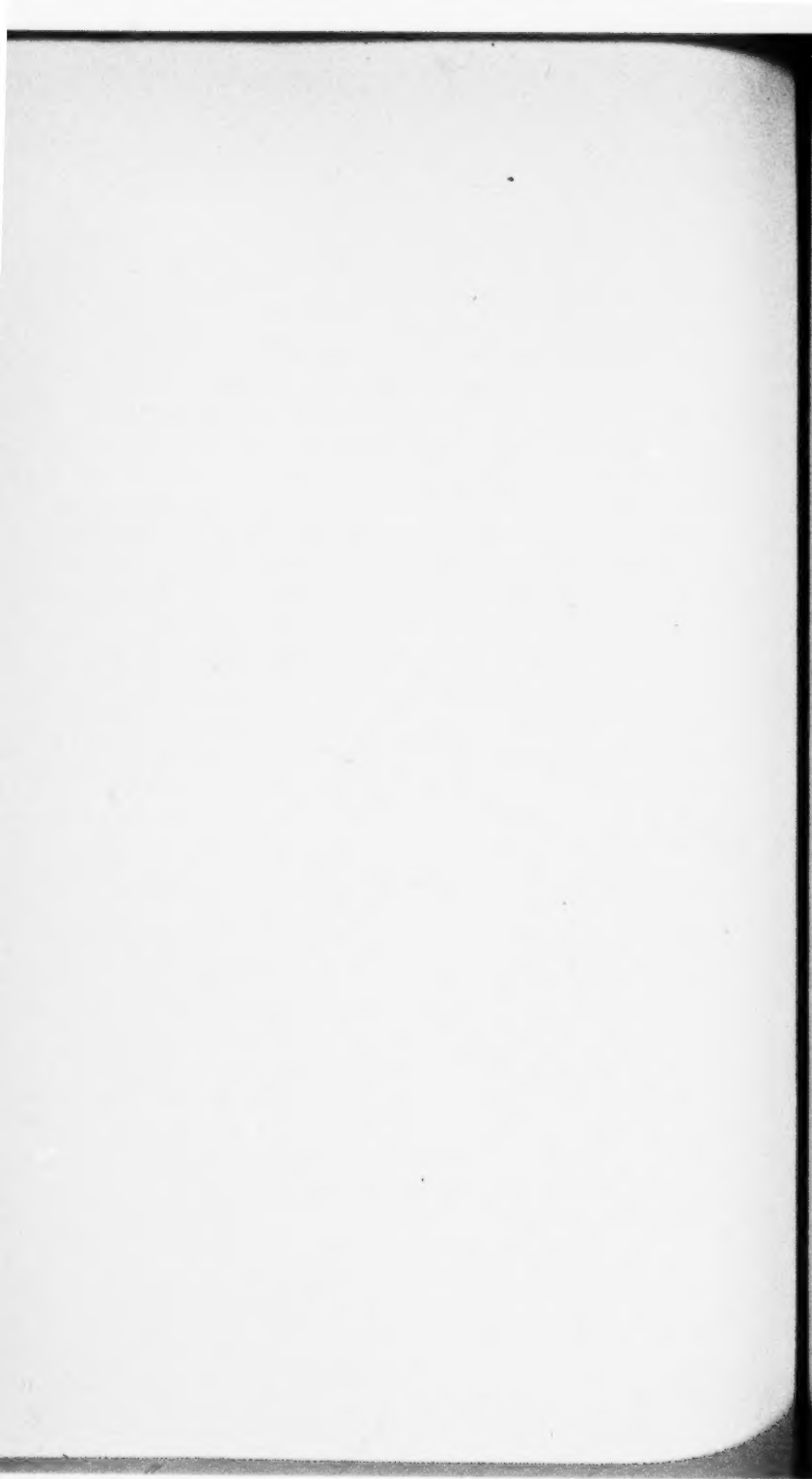
CONCLUSION.

It is therefore respectfully submitted that the judgment of the lower court should be affirmed as regards all the appellants, with interest at the stipulated rate and costs.

F. C. FISHER,

*Counsel for the Hong Kong & Shanghai
Banking Corporation, Appellee.*

Washington, D. C.,
September 15, 1917.



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Office Supreme Court, U. S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 230.

(25,411.)

ZOILO IBANEZ DE ALDECOA Y PALET AND JOA-
QUIN IBANEZ DE ALDECOA Y PALET, APPEL-
LANTS,

vs.

THE HONG KONG & SHANGHAI BANKING COR-
PORATION, APPELLEE,

and

No. 231.

(25,412.)

JOAQUIN IBANEZ DE ALDECOA Y PALET, ZOILO
IBANEZ DE ALDECOA Y PALET AND ISABEL
PALET Y GABARRO, APPELLANTS,

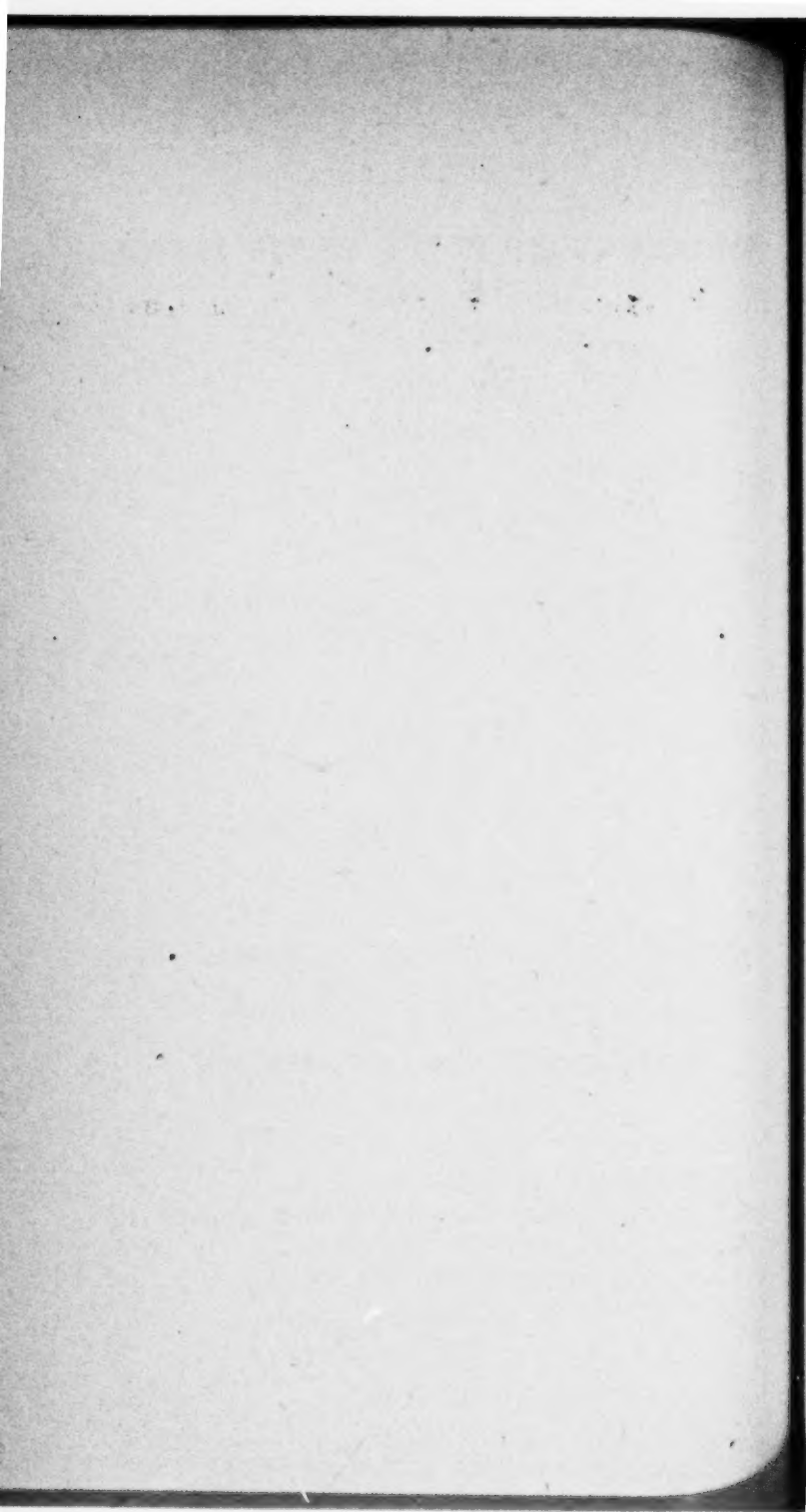
vs.

THE HONG KONG & SHANGHAI BANKING COR-
PORATION, APPELLEE.

SUPPLEMENTAL BRIEF FOR APPELLEE.

C. C. TUCKER,
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EVANS BROWNE,

For the Appellee.



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vs.

THE HONG KONG & SHANGHAI BANKING CORPORATION, APPELLEE.

SUPPLEMENTAL BRIEF FOR APPELLEE.

I.

THE CODE OF CIVIL PROCEDURE DID NOT REPEAL EXPRESSLY, OR BY IMPLICATION, THE PROVISIONS OF THE CIVIL CODE RELATING TO THE USUFRUCT OF PARENTS IN THE PROPERTY OF THEIR MINOR CHILDREN AND THE EMANCIPATION OF CHILDREN BY THEIR PARENTS.

The trial court (Lobingier, Judge) (p. 304, Record in No. 231), said:

"We do not think that it can be successfully contended that the provisions of the Civil Code in which the patria potestas is set forth have been repealed. The patria potestas is one of the most ancient rights recognized by the civil law. Existing long before the Twelve Tables, it is expressly recognized in that famous collection and continued to exist with slight modifications during the entire life of the Roman Law. When that system was imported into Spain the patria potestas came with it and is recognized in the Siete Partidas (IV (18) 1) in all its vigor. As the latter formed the basis of the Philippine common law it is clear that the patria potestas did not depend upon any provision of the Civil Code, having been in force in the Philippine Islands for centuries before that instrument was extended here. To hold that a doctrine of such antiquity and importance, and constituting such an essential feature of the civil law and domestic relations is abrogated by a doubtful provision of the new Code of Civil Procedure, would be revolutionary. Sections 551 and 553 of said code which are pretended to have effected such repeal are not necessarily inconsistent with the patria potestas. They should be harmonized, if possible (*U. S. vs. Reyes*, 10 Phil. 427), and we think they can be. At least the Supreme Court has recognized, the patria potestas as existing since the present Code of Procedure came into force (*Mendoza vs. Ibañez*, 4 Phil., 666); *Tuazon vs. Orozco*, 5 Phil., 61; *Reyes vs. Alvarez*, 8 Phil., 725). If a doctrine so startling as contended for by counsel for defendants is to be announced, it should be by the Supreme Court, and not by this court. Besides, we are disposed to agree with counsel for plaintiffs that the defendants, Joaquin and Zoilo Aldecoa and their mother, being Spanish subjects, were governed in this matter by the law of Spain (*Bosque vs. U. S.*, 209 U. S., 96; *Martinez vs. Castro*, 2 P. R. Fed., 523; *Rios vs. Burset*, 2 P. R. Fed., 192, affirmed in 209 U. S., 283).

Section 551 of the Code of Civil Procedure authorizes the court, when it appears necessary or convenient, to appoint guardians for the person and estate, or either of them, of minors, who have no guardian legally appointed by will or deed. Section 553 provides that "the father, or in case of his death or legal disqualification, the mother of the child is to be deemed the natural guardian of the child, and as such is entitled to the custody and care for the education of the minor, but not of his estate, unless so ordered by the court;" and further, that it shall be the duty of the court, in the appointment of the guardian of an estate of a minor, to appoint the father or mother, or near relative of the child, preference being given in the order named.

Section 554 provides that a guardian duly appointed shall have the custody and care of the education of the minor, if the court shall so order, and likewise the care and management of his estate, if the court shall so order, until such minor arrives at the age of majority, or marries, or until the guardian is legally discharged.

Section 555, requiring the guardian to give bond, to make an inventory of the estate of his ward, and to dispose of and manage the estate for the best interests of the ward, requires the guardian to render an account within three months after his appointment, and at the expiration of his trust to settle his accounts, and to pay over that portion of the estate remaining in his hands "to the person lawfully entitled thereto."

There is nothing in the Code of Civil Procedure dealing with the law of parent and child, or of infancy; and there is nothing fixing the age of majority, or determining how and under what circumstances an infant becomes relieved of the disqualifications of minority. Nor is there anything in the Code of Civil Procedure giving or depriving an infant of the right of emancipation, or depriving a parent of the right to emancipate his child.

Nor is there anything in the Code of Civil Procedure on

the question of the parent's legal duty to support and educate his child, or to furnish the child necessities.

So that recourse must be had to the Civil Code or Spanish law, to ascertain what the law was upon these subjects, after the passage of the Code of Civil Procedure.

By the Civil Code the father, and in his absence the mother, was charged with the express legal duty "of supporting them (their children), to keep them in their company, educate and instruct them in proportion to their means," etc. (Art. 155, Civil Code). In return for this the parent was given a usufruct in the child's property during minority (Art. 160, Civil Code). The Code of Civil Procedure being silent on the parent's legal duty to support the child, it would seem plain that there was no repeal of the Civil Code provision on this subject; so that the parent remains under such legal obligation.

Nor does the Code of Civil Procedure, in terms, divest the parent of the usufruct in his child's property during minority. This usufruct is plainly a property right, and would seem to be expressly saved by paragraph 6 of section 795 of the Code of Civil Procedure, which provides "that nothing in this act contained shall be so construed as to *divest, or injuriously affect, any property right that has already become vested under existing law.*" This saving provision should be considered in connection with the repeal provision of section 795, which limits the repeal to laws "prescribing the *procedure* in civil actions or special proceedings."

Section 553 of the Code of Civil Procedure does provide that the parent shall not be entitled to the *custody* of the child's estate, unless so ordered by the court, but this cannot be construed to divest the parent of his usufruct in his child's property, or in anywise to affect the reciprocal duties and obligations of parent and child. Giving this provision of section 553 full force and effect, it would seem merely to give the court the power to appoint a person, other than the parent, guardian or custodian of the child's estate, without

depriving the parent of his usufruct. After the passage, therefore, of the Civil Procedure, it would appear that the parent was as much entitled to this usufruct as he was before, and it was only right that he should be entitled to it, because he continued to be charged with the legal duty not only of supporting, but of educating, the child.

It is true that section 554 provides that "a guardian, duly appointed, shall have the custody and care for the education of the minor, if the court shall so order," but section 553 expressly provides that the parent is entitled to the same thing. Even if these two sections taken together should be construed as authorizing the court, in its discretion, to take from the parent the right of custody and care for the education of the child, the parent would not, thereby, be relieved of the legal duty of paying for such support and education.

It is respectfully submitted, therefore, that in the absence of express provision or necessary implication, it cannot be said that the sections quoted of the Code of Civil Procedure, which merely take away from the parent the custody of the child's estate in the discretion of the court, were intended to discharge the parent of his existing legal duty to support and educate his child, or to take away from the parent his vested property right, based upon such duty, to a usufruct in the child's property during minority, especially in view of paragraph 6 of section 795, "that nothing in the act contained shall be so construed as to divest, or injuriously, affect any property right that has already become vested under existing law."

Nor did the Code of Civil Procedure destroy the right of a child to parental emancipation after attaining eighteen years of age. This was a valuable and important right, which might also be properly characterized as a property right, on the part of the child, especially in view of the usufruct granted the parent in the child's property. Upon emancipation this usufruct ceased to exist, and the child

came into the free enjoyment of his property, save that under article 317 of the Civil Code the emancipated child could not borrow money or encumber or sell his real property without the consent of his parent.

The only argument advanced in support of the proposition that this right of emancipation was taken away by the Code of Civil Procedure is that such emancipation would deprive a guardian, appointed by the court, of his control over the property of a minor, or, in other words, in the language of the lower court, "the Court proceedings, with reference to the person and property of the minor child would, by the parent's act, be annulled" (pp. 162-163 of Record in No. 230).

But this argument presupposes that in all cases under pre-existing law, minority existed until twenty-three years of age. As already shown, the Code of Civil Procedure nowhere attempts to define minority. It authorizes the court to appoint guardians, but does not say who minors are. To ascertain that recourse must be had to the Civil Code. An examination of the latter shows that adults are persons over the age of twenty-three years, *or persons who, being over the age of eighteen years, have received, with the parents' consent, the grant of majority, or who have married.* See page 51 of the Civil Code, title "Majority", especially article 324, which says: "The provisions of Article 317 (relating to emancipation) shall be applicable to the minor *who has obtained the qualifications of majority.*"

So that, after the passage of the Code of Civil Procedure, the court had no power to appoint a guardian of a person over eighteen years of age, who had been emancipated by his parents; or, if the court, before such emancipation, had appointed a guardian and the minor then received parental emancipation, the guardianship necessarily ended; just as it would end when an infant, who had not been emancipated, attained the age of twenty-three years. In other words, under the Code of Civil Procedure, a person over eighteen

years of age, who had received parental emancipation, could successfully resist the appointment of a guardian under the provisions of that Code; or, if the appointment of a guardian, the ward received parental emancipation, he would have the right to claim the qualifications of majority and a final accounting from his guardian.

II.

THE SAVING PROVISION OF SEC. 581 OF THE CODE OF CIVIL PROCEDURE WITHHELD THE APPLICATION OF THE NEW LAW FROM ALL OF THOSE CASES WHICH WERE ALREADY BEING TAKEN CARE OF UNDER THE PROVISIONS OF THE CIVIL CODE.

"Sec. 581. Pending guardianships to proceed in accordance with Spanish law, with certain exceptions.—All proceedings in cases of guardianship pending in the Philippine Islands at the time of the passage of this Act, shall proceed in accordance with the existing Spanish procedure under which the guardians were appointed, provided, nevertheless, that any guardian appointed under existing Spanish law may be removed in accordance with the provisions of section 574 of this act, and his successor may be appointed as therein provided, and every successor to a guardian so removed shall, in the administration of the person or estate, or either, as the case may be, of his ward, be governed by the provisions of this act."

It was manifestly the intention of this section that pending guardianships should not be disturbed. Of course, the authors of the new code expressed themselves in terms of American law. In the Spanish law, as disclosed by the Civil Code, guardianship and parental authority were two distinct things. The object of guardianship was defined by Title IX, Art. 199 of the Civil Code to be "the custody of the person and property, or only of the property, of those, who,

not being under the parental authority, are incapable of taking care of themselves. "Parental authority," which was dealt with under a distinct title (Title VII), although not in terms called guardianship, was in fact a guardianship as we understand it. The parent was denominated "legal administrator" of the property of his children (Art. 159, Civil Code). Parental authority included, but went beyond, the common law guardianship by nature, which was the right of the father or mother to the custody of the person of the infant. It added to this right the right to administer the property interests of the child.

Thus, in American law, the generic term "guardianship," includes the Spanish "guardianship" and "parental authority."

From our standpoint, the Spanish father or mother was as much a guardian as one expressly appointed as such. Each was the administrator of the infant's estate. "Non-parental" guardianship was conferred by will, by law and by the family council" (Art. 204, Civil Code), and every guardian was required to give bond (Art. 252) and had to account as such (Chap. 10, Civil Code). "Parental authority," or "parental guardianship", was conferred by the existence of relation of parent and child. But the parent of the child owning property had to account also. If by will property was left a Spanish child for its education, the parent was charged with the administration of such property, if the will named no other person; and the will of the donor was required to be strictly observed. (Art. 162, Civil Code). In that event, an inventory was required to be made of the property with the intervention of the department of public prosecution, and on the recommendation of the department the Judge might decree the deposit in public securities of the property belonging to the child (Art. 163, Civil Code). In all property of an infant, not so limited by will, the parent had a usufruct, or use, during the minority of the child, but even then the parent was charged

"with the obligations of every usufructuary or administrator, and the special obligations established by Sec. 3, title 5, of the mortgage law" (Art. 163, Civil Code). And as such usufructuary, the parent was required, by Art. 491 of the Civil Code, before entering into the enjoyment of the property, "to make * * * an inventory of all the property, having an appraisal of the personal property made, and describing the condition of the real property," although he was relieved of the duty of giving security (Art. 492).

So that, when the Code of Civil Procedure was enacted there were in existence in the Philippines two forms of what the American lawyer and legislator would denominate "guardianship," namely parental guardianship, called in Spanish law "Parental authority," but having practically all of the attributes of guardianship, and guardianship of minors not having parents. Each of these guardians was amenable to the law, and was required by law to administer his ward's estate according to prescribed forms of law and by appropriate proceedings. The non-parental guardian was required to give bond and to state his accounts as guardian. The parental guardian, while not required to give bond, was required, under the particular circumstances named, to file an inventory of his child's property, and, if so ordered, deposit the property in public securities. Under all other circumstances, he, as usufructuary or administrator of his child's estate, was required to file an inventory of the property, making an appraisal of the personal property and describing the condition of the real property.

It would therefore seem to be clear that when the Code of Civil Procedure went into effect every parent was, in the sense of that code, a guardian of his infant child, and as such was charged with the duty under the law of proceeding as such, in a prescribed legal manner designed for the conservation of the child's estate, and such proceeding was under express legal control and supervision. Therefore, when, by section 581, pending guardianships were required

to proceed in accordance with Spanish law, it was the manifest intention not to disturb pending cases of parental administration of children's estates.

III.

The mortgage in dispute was ratified by the appellant, Joaquin, after he attained the age of twenty-three.

Both of the lower courts have so decided.

Nearly a year and a half after the date of the mortgage in dispute, namely on June 13, 1907, Aldecoa & Company, desiring to bring an injunction proceeding against a debtor, entered into an agreement with the appellee, whereby, in consideration of its furnishing the necessary bond, the judgment in such proceeding, if favorable to the firm, should be applied in full towards the indebtedness that the firm owed the appellee; while, if the suit was unsuccessful, any obligation that the appellee might incur should be added to the sum which the firm owed the appellee "and the payment thereof shall be secured by the same mortgages executed, mentioned and described in the instrument which the parties of the first part and the second part executed in its favor on the 23d day of February, 1906, a copy of which is attached to and made part of this document under the terms and conditions of said mortgage" (pp. 205-6 of Record, in No. 231).

The appellant, Joaquin, was a party to this agreement and signed it personally. It will be observed that the effect of the agreement was to practically give a conditional second mortgage upon the property in question.

It has been expressly held that a recital in a mortgage that it is made subject to a prior mortgage by the mortgagor while an infant, is a confirmation of the first mortgage.

Ward vs. Anderson, 111 N. C., 115.

"A mortgage executed by an infant on his lands will be ratified by any conduct on his part after attaining majority which manifests an intention to abide by his contract."

16 A. & E. Ency. of Law, p. 306.

Any act by which the infant, after becoming of age, assents to or recognizes as valid his act performed during minority, will be sufficient to confirm the same and preclude him from afterwards disaffirming it.

22 Cyc., p. 540.

Of course the mortgage in question was not a void, but merely a voidable instrument. It passed the title to the property involved, which could be divested only by act of mortgagors. It was in no sense a nullity and could be affirmed by act *in pais*. When the appellant, Joaquin, ratified it, he must be presumed, for he was then of legal age, to have known that he had capacity to do so, and must be presumed to have known what his legal rights in the premises were, for every person is presumed to know the law.

IV.

The following are facts and dates, with their references, which are here printed in order that the court may have ready reference to them:

Appellants were creditors of firm in the sum of ₱155,-127.31 according to the judgment of the trial court (p. 235, in Record No. 231).

The Supreme Court said in response to contention that appellants executed the mortgage under the impression they were partners and that therefore it was without consideration, that

"By the same judgment which released the plaintiffs from their obligations as partners of the firm, they were declared creditors of that firm. Here was a valid and subsisting consideration for the mortgage; the creditor's desire to preserve the firm intact in the hope of recovering from it in due course their total credits. It seems clear that it was the object of the mother and children to thus save the business and it matters little that the plaintiffs were creditors and not partners" (p. 175, in Record No. 230).

The deed of credit and mortgage dated February 23, 1906, provided that the bank should keep open in favor of the firm "a credit in current account up to the sum of ₧475,000, *part of which has already been used*" (p. 10, in Record No. 231).

On December 31, 1906, when firm went into liquidation, the indebtedness to the bank under the extension of credit was ₧516,517.98 (finding of Sup. Ct. R., p. 404, in No. 231).

Joaquin was born March 27, 1884.

Zoilo was born July 4, 1885.

Both were emancipated July 31, 1903, when Joaquin was 19 years and 4 months old and Zoilo was a little over 18 years old.

The deed of credit and mortgage was executed February 23, 1906, and recites that both were then 21 years of age (p. 4, in Record No. 230, but according to the dates of birth given Joaquin was then 22 years old less one month, and Zoilo was then 20 years and 7 months.

On November 6, 1906, Joaquin and Zoilo applied for land registration of their titles, their petition reciting that the land was subject to the mortgage in question in favor of the bank (p. 307, in Record No. 231). Zoilo was then 21 years and 4 months old. The decree of registration was dated September 8, 1907.

Article 4 of the Code of Commerce provides that persons

who have reached the age of 21 years shall have the legal capacity to engage in commerce (p. 396, in Record No. 231).

Respectfully submitted,

C. C. TUCKER,
ALEXANDER BRITTON,
EVANS BROWNE,
For the Appellee.

Service of copy of the above supplemental brief admitted
this — day of March, 1918.

Attorney for Appellants.

(37000)

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JAMES O. SMITH

IN WITNESS
Supreme Court of the United States

OCTOBER TERM, 1917.

(25,411)

No. 230.

**ZOLO IBARTE DE ALDEGUA Y PALET and JOAQUIN
IBARTE DE ALDEGUA Y PALET, Appellants,**

**THE HONG KONG AND SHANGHAI BANKING
CORPORATION, Appellee,**

and

(25,412)

No. 231.

**JOAQUIN IBARTE DE ALDEGUA Y PALET, ZOLO
IBARTE DE ALDEGUA Y PALET and ISABEL
PALET Y GABARRON, Appellants,**

**THE HONG KONG AND SHANGHAI BANKING
CORPORATION, Appellee,**

**An Appeal from two Decisions of the Supreme
Court of the Philippine Islands.**

**REPLY OF APPELLANTS TO APPELLEE'S
SUPPLEMENTAL BRIEF**

**ANTONIO M. GINSO,
Attorney for the Appellants.**

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

(25,411)

No. 230.

ZOILO IBANEZ DE ALDECOA Y PALET and JOAQUIN
IBANEZ DE ALDECOA Y PALET, *Appellants*,

v.

THE HONG KONG AND SHANGHAI BANKING
CORPORATION, *Appellee*,

and

(25,412)

No. 231.

JOAQUIN IBANEZ DE ALDECOA Y PALET, ZOILO
IBANEZ DE ALDECOA Y PALET and ISABEL
PALET Y GABARRO, *Appellants*,

v.

THE HONG KONG AND SHANGHAI BANKING
CORPORATION, *Appellee*,

**Appeal from the Supreme Court of the
Philippine Islands.**

**REPLY OF APPELLANTS TO APPELLEE'S
SUPPLEMENTAL BRIEF**

I.

Appellee begins by quoting the conclusion made by the Court of First Instance to the effect that the right of parental authority continues in force

in the Philippine Islands, forgetting the following important facts:

1. That that finding was made by the Court of First Instance in Case No. 231, where the main issue was whether or not the action of foreclosure should be abated on account of the pendency of Case No. 230 where the issue was as to whether or not the right of parental authority still existed after the promulgation of the Code of Civil Procedure. (See Rec. 231, pp. 146-149.)

2. That the same Court of First instance in Case No. 230 where the issue was whether or not the right of parental authority still existed after the promulgation of the Code of Civil Procedure, said: (Rec. 230, pp. 141, 151.)

“Did the mother of the plaintiffs have power at law to emancipate her children, the plaintiffs, so that they could freely dispose of or mortgage their real property, having her consent so to do?

Under the laws in force in the Philippine Islands at the time the documents of emancipation, hereinbefore referred to, were executed, the father, or in case of his death or disqualification, the mother of a minor child, is the natural guardian of the child and is entitled to its custody, but not of its estate, unless it is so ordered by the Court. (See section 553 of Act 190.)

Clearly, then, the mother, being the natural guardian of the plaintiffs, but not having the legal custody of their estate, for it nowhere appears that the Court has ordered their estate

into her custody, or in any way subrogated it to her control might emancipate the plaintiffs from her personal custody, but could not authorize them while minors to dispose of or mortgage their real estate, without the sanction of the Court.

3. That the finding of the Court of First Instance in Case No. 230, has been sustained by the Supreme Court of the Philippine Islands, (Rec. 230, pp. 159 to 165,) thereby reversing the findings made *obiter* by said Court of First Instance in Case No. 231.

4. That appellee, not having appealed from any of the decisions rendered by the Supreme Court cannot assign any cross-error or argue against the findings of the Supreme Court, which are binding upon said appellee. *Landram v. Jordan*, 203, U. S. 56, *Southern Pine Co. v. Ward*, 208, U. S. 126, *Guarantee Co. v. Phoenix Ins. Co.*, 126 Fed. 170.

It is therefore submitted that all the argumentation made by Counsel for appellee at pp. 2-7 of his supplemental brief are irrelevant, inasmuch as they tend to attack the findings of a decision from which he has not appealed and which has been rendered in a suit in which appellee was a party, said finding being the finding on an issue directly submitted by the appellee to the decision of the lower Court:

This insistence of the appellee in attacking, rightly or not, the first part of the decision of the Supreme Court of the Philippine Islands, (Rec. 230, pp. 159 to 165,) seems an admission of our contention that with such finding the second

part of the decision of the Supreme Court of the Philippines cannot logically stand, and is wholly untenable.

The undersigned begs to submit to this Hon. Court what he stated in his oral argument as to the fact that the finding made in last part of the decision of Case No. 230 is irreconcilable with the findings of the first part, where the Court says, (Rec. 230, p. 160,) that with the establishment of the new law of guardianship, "the Philippine Commission inserted no exception saving the institution of patria potestad from its operation"; that when it was enacted "no attempt was made to exclude the patria potestad from the operation of the law of guardianship" (p. 160) and that this law "extended to, and included minor children whose parents were still living" (*Id.*)

Counsel for appellee insists on attacking these findings of the Supreme Court because with them he knows that the last finding (against which we have appealed) cannot be sustained, because when it says that the provision of the new law "extend to children whose parents are still living" and those parents were exercising the right of parental authority, it cannot consistently say that the mother or these appellants was excluded from the operation of this law because she was exercising the right of parental authority before the promulgation of the Code of Civil Procedure.

The reason given by the Counsel for appellee in his argument that the right of parental authority as to the property of the minor children still exists is that Art 155 of the Civil Code provides that it is the duty of the parent to maintain and support

its minor child. We beg to submit that this Article is not in force at the present time and has not been in force since the promulgation of the Code of Civil Procedure.

Judge Charles A. Willard of the Supreme Court of the Philippine Islands, in his "Notes to the Civil Code" written a few years after the Code of Civil Procedure went into effect, says at page 29, commenting on Art. 155:

Art. 155.—The parents are not bound to support the child when he has property of his own sufficient for the purpose. (See Art. 160.)

And commenting upon Art. 160 (p. 29,) he says:

The new Code of Civil Procedure says that the father "is not the guardian of his estate unless so ordered by the Court." (Sec. 553.) By this provision Art. 159 of the Civil Code which gave the father as such the administration of his minor son's property has been repealed. * * * If the father is not appointed guardian but a third person is, who is entitled to the income of the ward's property? That the guardian is entitled to possession, is clear, not only from Art. 553, but also from Art. 565 which says that "every guardian must manage the estate of his ward frugally and without waste." This in itself is inconsistent with the idea of any right of usufruct in the father, for where tangible property is concerned, the *usufructuario* is entitled to possession.

But passing this point, is the father entitled

to receive the income from the guardian? There is no express provision to this effect in the new Code. On the contrary, there are provisions which indicate that he is not entitled to it. Section 563 says that "the guardian must pay all just debts due from his ward out of his personal estate and the income of his real estate if sufficient." Section 565 says "that the guardian *'must apply the income and the profits thereof'* for the comfortable and suitable maintenance of the ward and his family." Section 569 says that "when the income of an estate under guardianship is insufficient * * * to maintain and educate the ward" the real estate may be sold. These sections show plainly that the income is not to be paid to the father but that it is to be used in paying the debts of the ward and in providing for its maintenance. Another result follows from those sections, namely, *the repeal of Arts. 155 and 143 of the Civil Code so far as they require a father to support his minor children when the latter have sufficient property for that purpose.* The father having been relieved of that duty the legislator evidently intended to take from him the corresponding rights to the income.

It may be added that the provisions in Section 571 of the Code of Civil Procedure directing the investment of the surplus money which may be in the hands of the guardian, is inconsistent with the idea that such surplus is to be paid to the father.

It is clear then, as the Counsel for appellee admits, that, if the usufruct on the minor child's property was given to the father in return for his *duty* to maintain and support him, as soon as that duty ceases, there is no reason for the usufruct to exist.

And now as to the argument that the parent could not be divested of his right of usufruct and administration of the child's property under the provision of paragraph 6 of Sec. 795 of the Code of Civil Procedure, which he quotes. Aside from the fact that the reason for the existence of that right has ceased, as we have just seen, usufruct is not a vested right of property. The definition of the word *usufruct*, as given by Eseriche and in Black's Law Dictionary, is as follows:

USUFRUCT—in the Civil Law. The right of enjoying a thing, the *property of which is vested in another*, and to draw from the same all profits, utility and advantage which it may produce, provided it be without altering the substance of the thing. (Civ. Code. La. Art. 533. See *Mulford v. La Franc*, 26 Cal. 102; *Cartwright v. Cartwright*, 18 Tex. 628; *Strausse v. Sheriff*, 43 La Ann. 501.)

Besides, the Code of Civil Procedure came precisely to give to the minor the enjoyment of a right of which he had been deprived, to wit: the right to the profits and income of his own property. As well said by the Supreme Court of the Philippine Islands, the institution of the right of parental authority was repugnant to the American ideas of law and administration of justice and the

Philippine Commission determined to "ruthlessly brush aside the Spanish law and inaugurate the new in the form which had withstood the test of time in the United States." (Rec. 230, p. 168.)

Now we will go a step farther. We will grant, for the purposes of the argument, that the usufruct of the parent over the child's property was a vested right of property, and that under No. 6 of Section 795 of the Code of Civil Procedure the provisions of a said Code could not divest the mother of these appellants of her rights of parental authority over the property of her minor children, that is, of the right to use and enjoy the profits of the income of said property. But this does not mean that the provisions of the Code of Civil Procedure would give her the right to say when her children could have power to administer and manage their own property. She might have the right to renounce the right of parental authority according to Art. 167 of the Civil Code which provides that "parental authority terminates: (1) by death of the parents or of the child; (2) by emancipation; (3) by the adoption of the child." By making a deed of emancipation she renounced to that right, but since this act was executed after Chapter 27 of the Code of Civil Procedure went into effect, whereby the Courts are entrusted with or are given the exclusive power to appoint guardians for minors, she could not deprive the Court of that power by giving to her minor children the right to manage their own estate before they became of age.

If parental authority terminates according to the article of the Civil Code just quoted, by eman-

cipation, then we have that the relation following the Act of emancipation between the parent and the child is an entirely new relation, and inasmuch as in the present case it sprang after the provision of the Code of Civil Procedure went into effect, it must, therefore, conform strictly to the mode of procedure provided for in said Code and could in no way be governed by any other provision of the Civil Code. This being so, we are confronted now by the provision of Article 317 of the Civil Code which reads as follows:

Art. 317.—Emancipation qualifies the minor to control his person and property, as if of age; but, until he attains his majority, the person emancipated can not borrow money nor encumber or sell real property without the consent of his or her father, and in the absence of the latter, that of the mother, and, in the absence of both, without that of a guardian. Neither can he nor she appear in court without the attendance of said persons.

And by the provisions of the Code of Civil Procedure and especially under the provisions 553 and 569 of said Code, this consent could no longer be given by the parent unless said parent should first obtain from the Court his appointment as guardian of the minor's estate inasmuch as after the promulgation of the Code of Civil Procedure, only the Courts have power to authorize the sale or encumbrance of the estate of minors.

We notice that our proposition as contained in point 6 of our main brief has not been referred to by Counsel for appellee and we beg to submit

again said point to the consideration of this Hon. Court, the discussion of which will be found at pages 85 to 95 of our main brief.

II.

In answer to the second proposition found in Appellee's supplemental brief we might simply refer to and resubmit POINT TWO of our main brief which will be found at pages 53 and 64 of the same.

But in addition to this we beg to call the attention of the Court to the fact that the argument made in Appellee's supplemental brief is based on wrong impression, and on a bad interpretation of the Section of the Civil Code which he quotes therein. To begin with, there is no procedure provided for in the case of parental authority in the Civil Code, because the Civil Code was not a Code of Procedure. There was a Code of Procedure existing and in force in the Philippine Islands prior to the time of the promulgation of the present Code of Civil Procedure. That Code was repealed by the new Code, and on being repealed the Legislators, in order to avoid confusion, introduced Sections 581 and 795, saving those proceedings then *pending* in civil actions or special proceedings from the operation of the new Code, in so far as the provisions of the latter could not be conveniently applied to such actions or proceedings. But, as we have already submitted, in the case of the administration by the parent of the property of his minor children, there was no proceeding and there was no procedure to follow. There is not a single article either in the Civil Code or in the Code of

Civil Procedure * that has the least resemblance or allusion to any proceeding or procedure in the case of parental authority. As said by the Supreme Court in its decision, (page 159, Record 230,) after quoting the articles of the Civil Code relating to parental authority over the property of minor children, in those articles "nothing is said of a bonded guardian appointed by the Court and required to account to the Court for the property and income of the child's estate." Article 63 of the Code of Civil Procedure giving the jurisdiction of the Courts contains no provision in regard to proceedings or anything that might resemble them in the case of parental authority. *

Counsel for appellee in an effort to show that there was some sort of proceeding in the case of parental authority, cites Art. 163 and Art. 481 of the Civil Code. We are reluctant to believe that Counsel for appellee really wants to convey to this Court the idea that these articles provide for any proceeding or procedure before any Court in a case like the present one.

The right of parental authority according to Sections 159 to 166 of the Civil Code could be exercised in two different ways. The parent had the *usufruct* and therefore the **administration on the property** belonging to the child by its work or industry, or, as the Spanish text says, by lucrative title, that is to say, by inheritance; but if the property or the income of property was donated or left to a child by will to cover the cost of his or her education, then the father had no usufruct on said property, but had *only the administration and ONLY IN THAT CASE*, that is to say, *in the case where*

* We refer to the old Code of Civil Procedure.

the parent had only the administration, (See Art. 163 of the Civil Code,) the parent had to make an inventory and on the recommendation of the Department of Public Prosecution, the Judge might decree the deposit in public securities of the property belonging to the child.

In the other case, however, when the parent had the usufruct together with the administration, the intervention of the public prosecutor *was not necessary* and *there was no proceeding* before the Court. It is true that the father as the usufructuary might make an inventory, but this inventory was not made judicially and he was not really bound to even make one because, according to Art. 493, the usufructuary, whatever the title for his usufruct might be, might be excused from making an inventory when no one would be injured thereby; and the only judge as to whether or not he was excused from doing so, was the parent himself, because there is no provision contained in the Code as to who could compel him to make such inventory. At any rate the inventory was not part of any judicial proceedings and if made, could be made simply by private instrument or by notarial document.

Before we close the discussion of this point, we beg to call the attention of this Honorable Court to a misstatement made in the supplemental brief of the appellee: At page 9 thereof, counsel for appellee states that the law required the usufructuary *to file* an inventory. The Civil Code does not use the word *file*, but the word *MAKE*, and the Code does not say or contains any provision as to where this inventory was to be filed, which means in other words, that said inventory, as we have already said

before, needed only to be made in a private instrument or by notarial deed, and not judicially. The only time when the parent had to apply to Court, on a mere petition, was in cases when the property of the minor child was to be sold or encumbered, in which case, it is clear an undeniable that after the passage of the Code of Civil Procedure, no parent could have applied to Court for such authority to sell on the strength of his right of parental authority, but he would have first to be appointed guardian of his minor child and as such guardian, ask for permission of the Court to sell or encumber the child's property.

We respectfully submit then, that Section 581 in no way applies to cases of parental authority over the property of their minor children.

III.

The third proposition advanced by the Appellee in his supplemental brief is that the appellant, Joaquin Ibanez de Aldecoa has ratified the contract of Feb. 23, 1906. In answer, we beg to renew here our argument on pages 114 and 116 of our main brief. The mortgage contract not containing the requisites of Art. 1261 of the Civil Code cannot be confirmed. (Art. 1310 of the Civil Code.) Article 1311 of the same Code provides:

“The confirmation can be made either expressly or in an implied manner. It shall be understood that there is an implied confirmation when, *being aware of the cause of the*

nullity, and such cause having ceased to exist, the person who may have a right to invoke it should execute an act which necessarily implies his wish to renounce such a right.

In the contract of June 13, 1907, there is no express confirmation. There was no implied confirmation because Appellant Joaquin Ibanez the Aldecoa *was not aware of the nullity*, because the nullity had not ceased to exist and he did not execute any act which necessarily implied his wish to renounce the nullity. If there was any confirmation, it was done under a mistake of fact. All the conditions constituting the error which vitiated the contract of Feb. 23, 1906, still existed at the time the contract of June 13, 1907, was executed.

IV.

In regard to the first fact mentioned in chapter IV of appellee's supplemental brief wherein he makes reference to the decision of the lower Court in overruling the motion for a new trial, in answer to these appellants' contention that there was no consideration for the contract, we beg to refer this Honorable Court to pages 100 to 102 of our main brief where we call the attention of this Court to this part of the decision of the lower Court which we have assigned as error.

In answer to the statement that at the time the firm of Aldecoa and Company went into liquidation the outstanding debt of Aldecoa and Company to the Bank amounted to P. 516,517.98, we beg to

submit that this fact, far from being beneficial to the appellee, favors the contention of these appellants and that of the other appellant Isabel Palet, inasmuch as by extending the amount of the credit which the contract of February 23 was supposed to secure this contract became novated, and thus, the liability of these appellants and of the other appellant Isabel Palet immediately ceased, because said extension of credit changed the conditions of the contract.

Counsel for appellee makes a passing reference to the fact that these appellants in their application for registration of their property in the Philippines acknowledged the existence of the mortgage on said property, meaning perhaps to imply thereby that this was also a ratification of said contract of mortgage. We beg to point out that no such ratification can be derived from such an act because in the first place, said application was not signed by them, and in the second place, because even if they had signed it that application was made when they were still minors.

The citation of Art. 4 of the Code of Commerce we cannot see what bearing can have in the present case, when even if these appellants were able to engage in trade they could not either mortgage or sell their property without the consent of the Court, and before the Code of Civil Procedure went into effect, without the consent of the parent.

V.

In concluding, we beg to call the attention of

this Court, that the other points raised by the Appellants in their main brief still remain unanswered and no argument has been aduced to offset ours. We have confined ourselves to answer the Appellee's supplemental brief. This does not mean to say, and we do not desire it to be interpreted as relinquishing the other points mentioned and raised in our main brief which we incorporate hereto, and we submit to the consideration of this Hon. Court both as to the appeal of Joaquin and Zoilo Ibanez de Aldecoa, and as to the appeal of Isabel Palet y Gabarro.

Respectfully submitted.

ANTONIO M. OPISSO.

Attorney for the Appellants.

Opinion of the Court.

ZOILLO IBANEZ DE ALDECOA Y PALET ET AL. *v.*
HONGKONG & SHANGHAI BANKING COR-
PORATION ET AL.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE
ISLANDS.

No. 230. Argued March 20, 21, 1918.—Decided April 29, 1918.

As to cases existing at the time of its enactment, the Philippine Code of Civil Procedure did not displace the system of parental control and usufructuary interest defined by the Civil Code, respecting the property of minor children. *Held*, therefore, that the right of a parent to emancipate minor children and thus endow them with capacity to make a valid mortgage of their real estate persisted notwithstanding the Code of Civil Procedure.

Section 581 of the Code of Civil Procedure, providing that "all proceedings in cases of guardianship pending . . . at the time of the passage of this Act, shall proceed in accordance with the existing Spanish procedure under which the guardians were appointed," is construed broadly as relating not merely to court proceedings, but as expressly preserving existing powers and usufructuary rights of parents over the property of minor children, existing under the Civil Code.

30 Phil. Rep. 228, affirmed.

THE case is stated in the opinion.

Mr. Antonio M. Opisso for appellants.

Mr. C. C. Tucker, with whom *Mr. Alexander Britton*, *Mr. Evans Browne* and *Mr. F. C. Fisher* were on the briefs, for appellees.

MR. JUSTICE McKENNA delivered the opinion of the court.

Suit by appellants Joaquin Ibanez de Aldecoa and Zoilo Ibanez de Aldecoa, brought in the Court of First

Instance of Manila, to have declared null and void a mortgage executed by them in favor of appellees on the ground that when they executed the mortgage they were unemancipated minors.

After some preliminary procedure and upon answer filed and hearing had, the Court of First Instance dismissed the suit as to Joaquin Ibanez but granted relief in favor of Zoilo Ibanez. Upon appeal the Supreme Court of the Philippine Islands affirmed the judgment so far as it sustained the validity of the mortgage as to Joaquin Ibanez and reversed the judgment so far as it declared the nullity of the mortgage as to Zoilo Ibanez, and declared the mortgage binding upon the latter; that is, declared the mortgage valid as to both. This appeal was then prosecuted.

The facts are not in dispute. The appellants were born in the Islands, their parents being natives of Spain. Their father's domicile was in Manila, where he died October 4, 1895. After his death the firm of Aldecoa and Company, of which he had been a regular member, was reorganized and his widow became one of the general or "capitalistic" partners of the firm and she appeared as such in the articles of partnership.

On July 31, 1903, the mother of the appellants, they then being over the age of eighteen years, went before a notary public and executed two instruments wherein and whereby she emancipated them with their consent.

No guardian of the person or property of appellants has ever been applied for or appointed under the Code of Civil Procedure of the Islands since its promulgation; instead appellants had continued from the death of their father under the custody of their mother until the execution of the instruments of emancipation.

February 23, 1906, the firm of Aldecoa and Company was heavily indebted to the appellee bank and the bank was pressing for payment or security. In consequence

the mortgage, which is the subject of this suit, was executed February 23, 1906. On December 31, 1906, the firm expired by limitation and went into liquidation.

The question presented is whether the mother of appellants could legally emancipate them and thus confer upon them capacity to execute a valid mortgage of their real property, they consenting. The solution of the question, the Supreme Court said, "involves an inquiry as to the effect of the provisions of the New Code of Civil Procedure relating to guardianship upon certain provisions of the Civil Code relating to the control by parents over the persons and property of their minor children."

In other words, the question in the case turns upon the accommodation or conflict between certain provisions of the Civil Code and certain provisions of the Code of Civil Procedure, the latter being later in enactment. If its provisions did not repeal or supersede the provisions of the other, the mother of appellants had power to emancipate them and their mortgage was a valid instrument. On this question the courts below are in dissonance. The Court of First Instance considered that the codes were irreconcilable and gave a repealing strength to the Code of Civil Procedure. The Supreme Court rejected this conclusion and gave accommodation to the provisions of the codes by excluding those of the Code of Civil Procedure from operation upon parents who had assumed charge of the property of their minor children and were enjoying its usufruct prior to the adoption of that code. In other words, the rights and duties of such parents with respect to their children, including the right of emancipation, continued to be regulated by the Civil Code.

The court deduced this conclusion from the explicit language of the Civil Code conferring parental authority, the absence of a repealing, or modifying or superseding word in the Code of Civil Procedure, and the declaration of the latter that guardianships pending at the time of its

passage should "proceed in accordance with Spanish law," with certain exceptions, which emphasized the declaration. The declaration is important and we therefore quote it. It is § 581 and is as follows: "Pending guardianships to proceed in accordance with Spanish law, with certain exceptions. All proceedings in cases of guardianship pending in the Philippine Islands at the time of the passage of this Act, shall proceed in accordance with the existing Spanish procedure under which the guardians were appointed; *Provided, nevertheless*, That any guardian appointed under existing Spanish law may be removed in accordance with the provisions of section 574 of this Act, and his successor may be appointed as therein provided, and every successor to a guardian so removed shall, in the administration of the person or estate, or either, as the case may be, of his ward, be governed by the provisions of this Act."

The construction by the Supreme Court is vigorously assailed by appellants. It was so assailed in the Supreme Court and the court answered it and other contentions of appellants by a discussion at once minute and comprehensive. It is not possible to reproduce it or even epitomize it. Its basis is the customs and habits of a people with resulting rights which found expression and sanction in the Civil Code and of which there is no repeal, it was held, or displacement in the Code of Civil Procedure. And the abruptness of the change and disorder of rights which the contentions of appellants involve the court felt and declared.

The change, if change there was, was certainly abrupt and quite radical. Under the Civil Code parents had general control over the property of their children. "The father, or, in his absence, the mother, is the legal administrator of the property of the children who are under their authority" (§ 159), and by subsequent sections a usufruct in the property was given to the parents. "Fil-

iation," the court said, "stood in lieu of those legal safeguards" with which the "Code of Civil Procedure envelops the property of a minor child." And the court pointed out that there were certain restrictions upon the parent but they "did not make the parent a guardian." It was further held that the Civil Code drew a sharp and clearly distinguishable line between guardianship properly so-called, and the *patria potestas*, or parental authority, and confined the former to guardianship contained in article 199 of that code which defined it as "the custody of the person and property or only of the property of those who, not being under the parental authority, are incapable of taking care of themselves."

It was upon these considerations that the court based its judgment, and if it be granted there are counter considerations of strength we are disposed to defer to the tribunal "on the spot." It has support in the principles of our jurisprudence which are repellent to retrospective operation of a law and the repeal by implication of one law by another. These principles have urgency in the present case. The change contended for is not only abrupt but fundamental. It is not change of procedure merely but of systems, disturbing rights, divesting or imposing obligations. Indeed, the present case is an example. The mother of appellants, in confidence of her right to do so, emancipated the appellants, and the appellees in equal confidence accepted it as legal, and that many are in like situation under like confidences may be conjectured.

It is in effect urged, however, that such disorder was foreseen and accepted as a consequence of existing laws which the legislators with ability and care made a study of, and, "finding the law of guardianship and the law of parental authority, as they stood then, repugnant to the American idea of justice, 'ruthlessly brushed aside' the old order and inaugurated 'the new in the form which had

withstood the test of time in the United States.'" In other words, displaced the parental authority and all that it meant of power of administration and enjoyment by the parents of the estates of their minor children.

We concede the care and ability of the legislators but deduce a conclusion different from that of counsel. We are convinced that neither would have been exercised to displace abruptly a system so fixed in the habits and sentiments of a people as parental authority was in the habits of the Islands, and certainly not without explicit declaration, and leave without warning so radical and important a change to be collected from disputable implications. We concur, therefore, with the Supreme Court that § 581, *supra*, was intended to save "from the operation of the new act all proceedings in cases of guardianship pending in the Philippine Islands at the time of its passage." And guardianship and the administration of an estate did not mean, as contended by appellants, something procedural in a court, but they meant what the laws recognized as such and, we have seen, § 159 of the Civil Code provides that "the father, or, in his absence, the mother, is the legal administrator of the property of the children who are under their authority." The right is a valuable one and it has as an incident a right as valuable, the usufruct of the estate administered.

The value and extent of both rights this court has had occasion to declare in *Darlington v. Turner*, 202 U. S. 195, 230, *et seq.*, and in view of that case we are forced to think that, however our habits may induce us to approve the American system of the relation of parent and child and that there should be interposed between them when property interests are involved the order of a court and the security of bonds, there are other peoples—including a State of this Union—who have found that they could rely with confidence on other than material considerations for the performance of duty and that "filiation"

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Syllabus.

could stand in lieu of "those legal safeguards" with which the new code of procedure "envelops the property of a minor child."

There are other contentions of appellants which are either mixed with questions of fact or depend upon an appreciation of local matters and procedure the decision of the local court upon which we accept.

Judgment affirmed.

JOAQUIN IBANEZ DE ALDECOA Y PALET ET AL.
v. HONGKONG & SHANGHAI BANKING CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 231. Argued March 20, 21, 1918.—Decided April 29, 1918.

Mortgagors, in an action to foreclose, unsuccessfully pleaded in abatement their pending action to annul the mortgage, which had been submitted. *Held*, that the ruling, even if erroneous, became harmless in view of a judgment in the earlier action by which the validity of the mortgage was correctly sustained.

The court accepts the lower courts' interpretation of the Philippine law (Civil Code, Art. 1851) to the effect that mere failure of a creditor to sue when the obligation in whole or in part matures does not extend its term, and that to extinguish a surety's liability an extension must be based on some new agreement by which the creditor deprives himself of the right immediately to enforce his claim.

The judgment of the trial court is modified to correct a clerical error, appearing by the trial court's opinion and by concession of appellee's counsel.

39 Phil. Rep. 255, affirmed.

THE case is stated in the opinion.

Mr. Antonio M. Opisso for appellants.

Mr. C. C. Tucker, with whom *Mr. Alexander Britton*, *Mr. Evans Browne* and *Mr. F. C. Fisher* were on the briefs, for appellee.

MR. JUSTICE McKENNA delivered the opinion of the court.

This suit was submitted with No. 230, just decided, *ante*, 621. It was brought in the Court of First Instance of Manila to foreclose, among other purposes, the mortgage which that suit was brought to declare void. The defense in this case of Joaquin Ibanez and Zoilo Ibanez is based on the same ground that they alleged as a cause of action in the other case, that is, that the mortgage is a nullity because they were unemancipated minors when it was executed. This contention and the facts and legal propositions relevant to it are set out in No. 230 and need not be repeated. It was there decided that their emancipation was complete and legal and the mortgage executed by them therefore valid, the Civil Code providing for such emancipation not having been repealed or superseded by the Code of Civil Procedure—this being the basic contention.

Other defenses are, however, set up which were more or less mingled with defenses of other parties to the suit who are not here. Those special to Joaquin and Zoilo Ibanez were, as separated by the Supreme Court: (1) The pendency of another suit, and (2) a former judgment.

(1) Under this it was urged that the suit for the annulling of the mortgage (case No. 230) had been submitted for adjudication and had not been disposed of. Identity was hence asserted between the two actions and it was insisted that the second should have awaited the disposition of the first. The Supreme Court took a

different view, urged thereto by cases which it cited. But counsel say that if the mortgage had been declared null in the first action (No. 230) it could not have been foreclosed in the second (that at bar), as it would have encountered the plea of *res judicata*. If, however, the mortgage had been upheld in the first action the appellants would have been precluded from attacking it in the second. That the alternatives would have occurred may be conceded; one of them, indeed, has occurred and has demonstrated that appellants suffered no detriment from the ruling.

The appellant Isabel Palet assigns as error that the Supreme Court failed to hold (1) that her liability as surety of Aldecoa & Company had been extinguished in accordance with the provisions of article 1851 of the Civil Code, which provides that "The extension granted to the debtor by the creditor, without the consent of the surety, extinguishes the security." (2) Refused to order for her benefit that the property of the company should be exhausted before resort be had to her property for satisfaction of the bank's claim.

It will be observed at once that the defenses have some dependence upon questions of fact upon which the two courts below concurred. From article 1851 of the Civil Code, abstractly considered, nothing can be deduced. Both the trial and Supreme Courts held that "the mere failure to bring an action upon a credit, as soon as the same or any part of it matures, does not constitute an extension of the term of the obligation." And it was further held that the extension, to produce the extinction of the liability, "must be based on some new agreement by which the creditor deprives himself of the right to immediately enforce the claim." This interpretation of the local courts of the local law we defer to. The construction, moreover, expresses the rule that obtains in other jurisdictions.

As to the other assignment of error the court replied that Isabel Palet did not deny that as a member of the firm of Aldecoa & Company she was liable with the company and that, besides, the trial court had directed that the mortgaged properties, including the properties mortgaged by her, should be sold under foreclosure in the event the company should not pay into court the amount of the judgment within the time designated for the purpose.

Counsel for appellee, however, admits that by clerical error the judgment is made to run "against the company and Isabel Palet jointly and severally and does not in terms express the subsidiary character" of her liability, and he therefore does not oppose a modification of the judgment to conform to the opinion of the trial court, that is, "that save as regards the foreclosure of the mortgage no execution shall issue against Isabel Palet until after the exhaustion of the assets of the principal debtor [the company]—which, by the way," counsel adds, "is a mere formality, as there are no such assets available, Aldecoa & Company being notoriously insolvent, as stated by the Supreme Court in its decision." Opposing counsel may not be of this opinion and we therefore modify the judgment as indicated, and, as modified, it is

Affirmed.